AP Government
Article III
Reading Guide

Name:____________________________

Block:______
1. What does the Constitution say about the Supreme Court? What did the Founding Fathers think about the Supreme Court? –Look at the picture
Define lame duck-please look up President Obama’s last selection for a Supreme Court Justice and what happened. Do you agree or disagree with Mitch McConnell’s decision? https://www.politico.com/story/2016/02/mitch-mcconnell-antonin-scalia-supreme-court-nomination-219248

2. Discuss the impact *Marbury v. Madison* (1803) had on Supreme Court authority. What important power did it establish for the court?

3. What does judicial review mean? Explain in your own words

4. A court’s jurisdiction refers to:

   original jurisdiction

   appellate jurisdiction

5. List the types of federal courts from lowest to highest: Draw a picture of the Federal and State court system
6. What is the difference between appellate and original jurisdiction?

7. What is the difference between criminal and civil law?

8. Explain constitutional courts and Legislative courts

9. What is a brief?

10. Describe precedent and explain its significance in the US court system.

**Precedent**

*Lawyers for both sides of a case look to cases that have been decided in the past that bolster their current arguments.*

*For each pair of cases below describe how precedent could be used as an argument.*

You are a lawyer for the students working on the school newspaper in the case *Hazelwood School District v. Kuhlmeier*. How might you try to use the decision in *Tinker v. Des Moines* as precedent?
You are a lawyer representing the school in the case *TLO vs. New Jersey*. Your opponent (TLO’s lawyer) uses *Mapp vs. Ohio* as precedent. How would you respond – what would you say is different about that case?

You are a lawyer representing Gideon in *Gideon v. Wainwright*. How might you use *Gitlow v New York* as precedent? Be careful because the two cases are different but do share something in common.

8. (Define) *stare decisis*:

9. Define *senatorial courtesy*:

10. List (6) factors in selecting a Supreme Court nominee:

11. What are the steps that nominees must go through to make it onto the Supreme Court?

12. Who are the two Justices that had the hardest time getting on the court in recent years?

13. How do interest groups participate in the Judicial Process?
14. What is the court doing when it issues a **writ of certiorari**?

15. Define the **rule of four**.

16. Describe the typical Supreme Court law **clerk**. What role do they play in hearing and deciding cases?

17. Identify and state the significance of the **Solicitor General**.

18. Is a case more likely to be heard by the Supreme Court if there is a strong interest group behind it? Don’t just write yes or no—answer the question and back it up):

19. Identify and state the significance of **amicus briefs**.

20. How much time do lawyers get to present their case to the Supreme Court?

21. How are the conferences (meeting of the justices behind closed doors) different under Chief Justice Roberts than they were under his predecessor (Chief Justice Rehnquist).

(Define) judicial restraint –

(Define) judicial activism –

22. In 2006, the US Senate voted unanimously not to change the Voting Rights Act of 1965. If the Supreme Court changes the law in the next few months, is that an example of judicial restraint or judicial activism?

(Define) strict constructionist –

The **Roe v. Wade** (1973) decision upheld a woman’s right to an abortion by virtue of a right to privacy. However, a right to privacy is not mentioned in the Constitution. Is this decision
an example of strict construction or loose construction?

23. Describe 2 ways the Supreme Court is insulated from public opinion. (This answer is not in the book so you will need to come up with your own theories/ideas).

24. Describe 3 factors that keep the Supreme Court from deviating too far from public opinion?

25. How does the Supreme Court create policy?

26. Give an example of a case where the Supreme Court overruled itself.

28. Explain judicial implementation. Explain the difference opinions written by the court. Concurring opinions, majority opinions, plurality opinions, dissenting opinions

29. Why is Judicial Branch considered the weakest branch? Federalist 78

27. What did Andrew Jackson mean when he said about the Supreme Court, “John Marshall has made his decision; now let him enforce it.”

Multiple Choice

2) All of the following are checks on the judiciary EXCEPT A) Congress can alter the jurisdiction of the Supreme Court. B) Court decisions can be reversed by constitutional amendment. C) Congress can pardon those convicted by the courts. D) Judges can be impeached and removed from office. E) The president appoints judges with the “advice and consent” of the Senate.

3) The Judiciary Act of 1789 A) created the Supreme Court and its jurisdictions. B) established the state court structures. C) established the basic structure of the federal court system. D) granted the Supreme Court the power of judicial review. E) required the states to abide by the Bill of Rights.

4) What does the Eleventh Amendment say? A) A citizen of one state cannot sue another state in federal court. B) Congress has the power of judicial review. C) The Supreme Court has the power of judicial review. D) Congress can establish a national bank. E) The Supreme Court “shall render Judgment in all Cases arising from violations of the Constitutions of the Various States.”


6) Courts with appellate jurisdiction typically A) review the factual record of a lower court for mistakes. B) determine factual matters in the case involved. C) review the legal procedures of a lower court for mistakes. D) hear evidence regarding the facts of the case. E) rubber stamp the decisions of trial courts.

10) Which of the following lists of federal courts is in order from the lowest court to the highest court? A) district courts; Supreme Court; courts of appeals B) courts of appeals; district courts; Supreme Court; legislative courts C) Supreme Court; courts of appeals; district courts D) district courts; courts of appeals; Supreme Court E) municipal courts; country courts; state courts; federal courts

11) In court rulings, a reliance on past decisions or precedents to formulate decisions on new cases is called A) stare decisis. B) solicitation. C) strict construction. D) certiorari. E) fiat lux.

12) Who is most likely to write an amicus brief? A) Congress B) the chief justice C) the chief justice if he is in the majority; the associate justice with the most seniority if the chief justice is in the minority D) the media E) interest groups

13) The idea that judges should use their power broadly to further justice is called A) stare decisis. B) original intent. C) judicial restraint. D) judicial activism. E) conservative restoration.
True/False  14) The bulk of the judicial work in the federal system takes place in the Supreme Court. 15) The Constitution sets the number of justices on the Supreme Court at nine  16) Politics permeate the selection process for judges and justices.

OK—can you answer all the review questions on page 220 and define all the words?

Civil Liberties—Chapter 4

1. Define civil liberties:

2. Define civil rights:

3. Summarize the difference between civil liberties and civil rights:

4. Define 14th Amendment’s due process clause:

5. Describe how the Gitlow v. New York (1925) changed the way that the Bill of Rights applied to state governments.

6. Define selective incorporation and explain why the word “selective” is used in this term:
7. Define due process rights:

8. Identify the right that each of the following cases incorporated:


9. What are three essential characteristics of fundamental freedoms?

9. Define First Amendment:

10. Define establishment clause:  -How does the *Lemon v. Kurtzman* case help to deal with issues of relating to this clause?

11. Define free exercise clause:

12. Why is polygamy not allowed under the free exercise clause?

13. What did the Supreme Court decide in *Engel v. Vitale*?

The free exercise clause of the First Amendment has challenged the Supreme Court and lawmakers for decades. Why do you think it is such a difficult topic to legislate or rule upon?

How have the following free exercise questions been answered by laws or court decisions: look up and give court case

∞Rights for conscientious objectors:
Prisoners practicing religion while detained:
- Use of illegal drugs in religion:
- Requiring health plans to include coverage for contraceptives:

14. Define prior restraint:

15. Explain how the clear and present danger test was used to suppress even political speech.

16. Describe how this test was used in the Schenk v. U.S.

17. Explain how the direct incitement test would have impacted the sedition cases.

Protected Speech and Press Cases that relate with brief description

Limiting Prior Restraint

Symbolic Speech

Hate Speech

Unprotected Speech and Press Cases or rulings that relate with brief description

Libel and Slander

Fighting Words

Obscenity
18. *DeJonge v. Oregon* incorporated which portion of the First Amendment?

19. Why did the Second Amendment please the Anti-Federalists during ratification?

20. What issue lead to the explosion of organized crime in the 1920’s and 30’s?

21. How did congress respond in 1934 and what case upheld the legality of the law?

22. Explain D.C. v Heller and McDonald v. City of Chicago 2010 Court case that incorporated the Second Amendment.

23. Define the following due process terms: -writs of habeas corpus-YOUR WORDS
- ex post facto laws -bills of attainder –grand jury

24. What is the 4th Amendment?

25. How has the 4th Amendment been interpreted when it comes to drug testing? Give examples.

26. Under what circumstances are warrantless searches able to occur?

27. What is the 5th Amendment?

28. Who was Miranda?

29. Define Miranda rights:

30. Define double jeopardy:

31. Define the exclusionary rule:

32. Why was it necessary to create the exclusionary rule?

33. How does this rule apply to the case of Mapp v. Ohio (1961)?

34. Describe how the case of *Gideon v. Wainwright* changed the application of the 6th Amendment’s right to counsel.

35. How have impartiality requirements been interpreted over time and what does the court say about peremptory challenges?
36. Why did the Court say capital punishment was unconstitutional according to *Furman v. Georgia*? What did the Georgia lawmakers do in response? What amendment?

37. What two key classes of people are exempted from the death penalty?

38. *House vs Bell* recognized the power of ______ evidence.

39. What power do Governors have when it comes to those on death row?

(Define) right to privacy and where is it in the Constitution?

40. What Connecticut law was overturned in the Supreme Court case *Griswold v. Connecticut* (1965)?

41. Roe v. Wade (1973) challenged a Texas law that allowed abortion in very limited circumstances. What did the Texas law say?

42. *Planned Parenthood of Southeastern Pennsylvania v Case*

43. What was the significance of the *Lawrence v. Texas* case towards gay rights?

44. *Obergefell v. Hodges*

45. Explain how the US Patriot Act has affected civil liberties including First Amendment, Fourth Amendment and Due Process

46. Describe the following Supreme Court Justices-Warren Burger and Earl Warren

   Explain how and why the NAACP uses litigation as an approach to getting laws changed and protecting minorities.

47. (Define) Thirteenth Amendment:
48. (Define) Black Codes:

49. What did the Fourteenth Amendment guarantee to all free slaves?

50. (Define) Fifteenth Amendment:

51. (Define) The Civil Rights Act of 1875:

52. (Define) Jim Crow laws:

53. (Define) Poll taxes/What amendment stopped poll taxes

54. (Define) Grandfather clause

55. What conclusion did the Supreme Court reach in the case *Plessy v. Ferguson* (1896)?

What case in the 1950s would overturn the decision made in the Plessy case?

56. (Define) suffrage movement:

57. (Define) Nineteenth Amendment:

58. (Define) *Brown v. Board of Education (1954)*/Who was the lawyer

59. (Define) equal protection clause/where is it found in the Constitution?

60. What specific topics did the Civil Rights Act of 1964 address:

61. What is the difference between *de jure discrimination* and *de facto discrimination*.

62. (Define) Equal Rights Amendment:

63. Equal Employment Opportunity Commission-What does it do

64. NOW(don’t just give me what is stands for)

65. Strict scrutiny
66. (Define) Title IX:

66. What gains have been made (in terms of gaining more rights) by the following groups:
   Hispanic Americans –
   Native Americans –
   Gays and Lesbians –
   Disabled Americans –

67. (Define) affirmative action:

68. Regents of the University of California v Bakke
69. What did the Supreme Court decide regarding affirmative action in Grutter v. Bollinger (2003)?

70. What issues has Wal-Mart faced regarding workplace discrimination?

*** (Go online to answer the questions below) Who is Lilly Ledbetter?
What company did she work for?
How is her case relevant to this chapter?

**Video 19: Structure of the Court System**
1. Why is the American Court system hierarchical?
2. How many federal US District Courts are there?
3. How many federal appeals courts are there?
4. What are the four scenarios where the federal courts have original jurisdiction?
5. How does a case get to the Supreme Court?
6. When does the Supreme Court have original jurisdiction?
7. What is the criteria for an appeals case to make it to the Supreme Court?
8. What are the cases the courts will almost always take?

**Video 20: Supreme Court of the United States Procedure**
1. What is the first thing you need in order to reach the Supreme Court?
2. What is a writ of certiorari?

3. What is the role of the solicitor general?

4. What is the purpose of the cert pool?

5. Define the rule of four?

6. What is a legal brief and what is its purpose?

7. Define the role of petitioner and respondent?

8. What is the purpose of an amicus curiae brief?

9. What is a majority opinion, single majority opinion, a remand, a holding occurring opinion, and a dissenting opinion?

10. Provide a procedural summary of what it takes for a case to get to the Supreme Court.

**Video 21: Judicial Review**

1. What is the official definition of judicial review?

2. What is appellate review?

3. What does the court have the power to do (there are four) and give an example of each?

4. Where does the court get the power of judicial review?
5. Why has this ruling stuck around? (make sure you reference stare decisis in your answer) Does Judicial Review violate the principle of separation of powers?

**Video 22: Judicial Decisions**
1. In what ways are justices influenced

2. Why is POTUS less influential than history to the justices of the Supreme Court

3. How important is political party affiliation and political ideology in the selection process?

4. The most important influence to a judge is their philosophical orientation, how so and what are the two most important philosophies?

5. What is judicial activism and what are the common characteristics associated with activist judges?

6. What is judicial restraint and what are the common characteristics associated with restraint judges?

7. How is originalism different than restraint?

8. What key decisions were made during the activist judge period of Warren/Burger Court of the 1950s and 1970s?

9. What decisions were made during the restraint judge period of Chief Justice Rehnquist of the 1980s and 2000sWhat is the point Craig is trying to make when discussing Chief Justice Roberts and his conservative nature and judicial restraint

**Video 23: Civil Rights and Civil Liberties**
1. What is the difference between Civil Rights and Civil Liberties (not how I taught you to differentiate between the two, but actually differences) ?

2. What is a substantive liberty? Give an example

3. What is a procedural liberty? Give an example

4. Where do we look to find civil liberties?

5. What was the ruling in Barron v. Baltimore? (summarize)

6. What does the 14th Amendment create?
7. Define selective incorporation. Give an example.

8. What were the Framers scared of when it comes to rights and liberties?
Due Process of the Law
The passages that follow discuss the constitutional amendments that safeguard due process of law. Use the list of words below to fill in the blanks.

Words: exclusionary, criminal, accused, charges, self incrimination, jury, defense, warrant, legal counsel, double jeopardy, cruel and unusual, witnesses, bail, searches and seizures, grand jury, trial by jury

Fourth Amendment
The Fourth Amendment protects citizens from unreasonable __________________________. This right is enforced in two ways. First police must have a valid __________________ in order to conduct a search. Second, illegally obtained evidence cannot be used in court because of the ___________________________ rule.

Fifth Amendment
The Fifth Amendment protects the rights of citizens who have been __________________ of a crime. It prohibits ___________________________ and ___________________________, or forcing people to testify against themselves. Furthermore, it grants a person charged with a serious federal crime the right to a _____________________________.

Sixth Amendment
The Sixth Amendment guarantees the right of citizens in __________________ cases to a trial by __________________. Individuals accused of a crime also have the right to know what __________________ have been made against them and the right to confront the __________________ testifying against them. The accused also have the right to call __________________ witnesses and the right to be represented in court by __________________________ even if they are unable to pay the legal fees.

Seventh Amendment
The Seventh Amendment guarantees the right of civil suits heard in federal court to a ____________________________ if the case exceeds more than twenty dollars.

Eighth Amendment
The Eighth amendment limits the amount of __________________ an accused person must pay. For those convicted of a crime, the amendment prohibits ___________________ and ___________________ punishment.
1. **Classic Federalism Cases:**
   A. **Marbury v. Madison (1803)** - midnight judges case; established the power of judicial review
   B. **McCulloch v. Maryland (1819)** - Bank of the U.S. case; states do not have the authority to tax the federal govt. It gave the supremacy clause and the necessary and proper clause more strength.
   C. **Barron v. Baltimore (1833)** - Supreme Court dismissed the case because the first ten amendments did not originally apply to the states
   D. **Dred Scott v. Sanford (1857)** - the Court said that because they did not consider Dred Scott to be a person, he did not have the right to sue in court. The Court also found the Missouri Compromise to be unconstitutional
   E. **South Dakota v. Dole (1987)** - States were told to raise their drinking age to 21 or forfeit all federal highway funding. The Supreme Court ruled that this was constitutional
   F. **Fletcher v. Peck (1810)** - States cannot pass laws that impair contracts or land titles made in good faith. 1st time the feds had overturned a state law

2. **Checks and Balances Cases:**
   A. **U.S. v. Nixon (1974)** - Nixon was forced to give up the Watergate tapes. The Court said that while executive privilege does exist, it is never guaranteed

3. **First Amendment and Religion Cases:**
   A. **Minersville v. Gobitus (1940)** - Jehovah’s Witnesses were being forced to salute the flag in public school. The Court upheld the kids’ suspensions. State can require pledge.
   B. **West Virginia v. Barnette (1943)** - 3 years later, the Court reversed itself on the Minersville case. A person, even a student, may legally refuse to say the pledge on free expression grounds.
   C. **Engel v. Vitale (1962)** - New York passed a law that all public school children would recite a nondenominational prayer every day at school. The court ruled that prayer in public school violates the Establishment Clause.
   D. **Abington Township v. Schempp (1963)** - PA law required all public school children to recite 10 bible verses daily. It was ruled a violation of the Establishment Clause
   E. **Lemon v. Kurtzman (1971)** – Just where is the line for public schools and establishing religion? The Court created the Lemon Test.
      i. *The statute must not result in an "excessive government entanglement" with religious affairs. (also known as the Entanglement Prong)*
      ii. *The statute must not advance or inhibit religious practice (also known as the Effect Prong)*
      iii. *The statute must have a secular legislative purpose. (also known as the Purpose Prong)*
   F. **Wallace v. Jaffree (1985)** - Alabama schools led students in a moment for meditation or silent prayer. Court finds that even this violated the Lemon test and therefore the Establishment Clause (third prong).

4. **First Amendment and Free Speech:**
   A. **Abrams v. US (1919)** - Abrams wrote pamphlets criticizing Woodrow Wilson. He was arrested for violating the Espionage and Sedition Acts. In this case his 1st amendment rights were violated. He did not push violence
B. Schenck v. US (1919) - Schenck mailed out flyers denouncing the draft and pushing Socialism. The Court created the “Clear and Present Danger Test” and upheld his conviction under the Espionage and Sedition Acts. His speech was especially troublesome because it hampered the US’s war effort.

C. Gitlow v. New York (1925) - Gitlow distributed the Communist Manifesto and urged people to rise up and overthrow the government. Gitlow’s conviction was upheld. It is the first INCORPORATION case!!!! (States might owe people the rights contained in the Bill of Rights).

D. Chaplinsky v. New Hampshire (1941) – The Court held that certain types of speech were not protected by the first amendment including obscene, profane, libelous and “Fighting Words”.

E. Tinker v. Des Moines (1969) - Kids were suspended for wearing black armbands to school protesting the Vietnam War. The Court said that “students do not give up their rights at the school house gate”. Symbolic Speech can be protected. Student speech can only be limited if it causes a disturbance.

F. Texas v. Johnson (1989) - The burning of the American flag is a form of protected, symbolic speech.

5. First Amendment and Free Press:
   A. Near v. Minnesota (1931) – Incorporates freedom of the press to states. The Court says censorship is rarely constitutional and prior restraint is definitely unconstitutional.
   C. Miller v. California (1973) – Found that obscenity is not protected speech and established the Miller test to define obscenity (which is pretty narrow; most things pass the Miller test and are not obscene)
      i. The average person, applying contemporary standards, would find that the work, taken as a whole, appeals to the prurient interest.
      ii. The work describes, in a patently offensive way, sexual conduct
      iii. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.
   D. Hustler v. Falwell (1988) - Larry Flint printed heinous cartoons about Jerry Falwell in Hustler magazine. The Court said that satire (untrue, malicious) is protected speech and public figures can be made fun of.
   E. Hazelwood v. Kulheimer (1988) - Principal at a public school removed 2 articles from the school newspaper. The Court sided with the principal saying he could censor the paper in order to keep the type of environment that he wanted.

6. Equal Protection Clause Cases:
   A. Plessy v. Ferguson (1896) - “Separate but equal” is constitutionally permissible. Leads to a proliferation of Jim Crow laws.
   C. Bakke v. Board of Regents of University of California (1978) – Affirmative action. Although racial quotas cannot be used, the use of a minority racial status can be used as one positive factor of a college’s decision on whether or not to accept a student’s application, as long as other factors are also considered. This is not a 14th amendment violation of (presumably white male) students who were denied admission.
   D. Obergefell v. Hodges (2015) - States that deny same-sex couples seeking marriage licenses are violating their equal protection. Essentially legalizes gay marriage in all 50 states.
7. Privacy Cases:
   A. **Griswold v. Connecticut (1965)** In a case that struck down a law forbidding the passing of information about contraception, the right to privacy was first articulated as a “penumbral” right in the Constitution.
   B. **Roe v. Wade (1973)** – Laws banning abortion through the 2nd trimester are unconstitutional because a woman’s right to privacy outweighs the state’s interest in protecting life before the point of viability.
   C. **Webster v. Reproductive Health Services (1980)** - Set viability at 20 weeks. Basically kept Roe, but does allow states to limit public funding of abortion services
   D. **Planned Parenthood of Southeast PA v. Casey (1992)** - again, it upheld Roe, but created the “undue burden” standard - any state restrictions had to be judged by whether or not they create an undue burden for the mothers. Minors requiring consent didn’t present an undue burden, requiring wives to obtain spousal consent did.

8. Due Process Cases:
   A. **Weeks v. US (1914)** - Police searched without a warrant and seized property. The Court found the searches to be illegal and created the Exclusionary Rule (illegally gotten evidence is not admissible in court)
   B. **Korematsu v. U.S. (1945)** - The court decided that the state can do extreme things during war. Putting the Japanese-Americans into camps was OK because they might pose a threat.
   C. **Mapp v. Ohio (1961)** – Incorporated the 4th amendment (the exclusionary rule) to the states. The Court overturned her conviction and said her 4th amendment rights were violated and the evidence cannot be used against her.
   D. **Gideon v. Wainwright (1963)** - Incorporated the 6th amendment protection of counsel to the states. All defendants must be provided a lawyer, even if they cannot afford one.
   E. **Miranda v. Arizona (1966)** - All suspects must be informed of their rights to silence and counsel before being arrested or questioned by police.
   F. **Katz v. US (1967)** - Establishes an expectation of privacy for searches, including wiretaps.
   G. **TLO v. New Jersey (1985)** - Students do not have the same 4th amendment rights as the public at large. School officials can search students with only a reasonable suspicion.

9. Voting and Election Cases:
   A. **Smith v. Alwright (1944)** - white primaries are illegal
   B. **Baker v. Carr (1962)** - federal courts do have jurisdiction in redistricting matters
   C. **Reynolds v. Sims (1964)** - voting districts must be apportioned by population (one man; one vote)
   D. **Bush v. Gore (2000)** – The presidential election of 2000 hinged on the electoral college votes of Florida – where the margin was very thin. The Gore campaign wanted to manually recount some county’s ballots, but because there was no state-wide procedures on just how to do this, the court ruled that not all ballots were being treated equally and therefore a manual recount must not occur. Because of the 5-4 partisan vote, this decision was highly controversial.
   E. **Buckley v. Valeo (2003)** - Limiting election contributions of individuals is constitutional, but limiting the contributions of the candidates themselves is not constitutional
   F. **Citizens United v. FEC (2010)** – campaign spending by corporations is a form of political speech that enjoys 1st amendment protections.

10. Commerce Clause Cases:
   A. **Gibbons v. Ogden (1824)** - states cannot decide who gets to use the waterways because interstate conflicts affect commerce negatively. Gave Congress broad powers under the commerce clause.
B. **Lochner v. New York (1905)** - Right to contract is implicit in 14th amendment. State laws that limit working hours infringe on employee/employer contract rights.

C. **Muller v. Oregon (1908)** – Despite the Lochner ruling, Oregon's law limiting the working hours of women was constitutional under the 14th Amendment, because of the strong state interest in protecting women's health.

D. **NLRB v. Jones and Laughlin Steel Corp (1937)** - Court upholds key New Deal legislation, greatly enhancing Congress’s powers under the Commerce clause

E. **Heart of Atlanta Motel v. US (1964)** - Commerce clause does allow Congress to require businesses that serve the public to not discriminate based on race.

F. **Katzenbach v. McClung (1964)** - Commerce clause does allow Congress to require businesses that serve the public to not discriminate based on race.

G. **US V. Lopez (1995)** - Commerce clause cannot be used to stop gun violence at school

H. **Morrison v. US (2000)** - The federal Violence Against Women Act was ruled unconstitutional because congress exceeded its powers under the commerce clause in enacting it. The stretchiness of the commerce clause seems to be waning.

11. **Second Amendment Cases**

   A. **U.S. v. Lopez (1995)** – Congress exceeded its powers under the commerce clause in enacting the Guns Free School Zone act

   B. **District of Columbia v. Heller (2008)** – The second amendment does cover individual gun ownership, not just militia use. Congress’s gun control laws in the D.C. were unconstitutional.

   C. **McDonald v. Chicago (2010)** - Incorporated the 2nd amendment to the states. A state gun control law was unconstitutional.
14th Amendment (ratified 1868) Overview

- Re-defined citizenship in U.S.
- Everyone born in U.S a citizen
- No state may deprive citizens of privileges of citizenship or due process of law
- Enfranchised all males citizens, black and white
- Would decrease representation if state not enfranchise blacks
- Declare that no person who held office in Confederacy could hold office in United States government

Politics Behind it:

- Written by moderate Republicans
- Want to keep southern blacks in South
- Also want to maintain their own political power nationally—So sponsored formation of Republican party within South
- The question of enforcement—Not clear how much jurisdiction Fed. Govt. had
- So never say states had to accept 14th—but made it requirement for admittance into Union. Otherwise, state remains territory

Key components of:

- **Privileges and Immunities Clause**
  - Citizens born or naturalized of US and the State.
  - States may not make or enforce any law which abridges privileges or immunities of citizens of the US.

- **Equal Protection Clause**
  - A uniquely American concept that arose out of slavery and its aftermath, the 14th Amendment's equal protection clause was to protect the political rights of newly freed slaves in the South.

- **Due Process Clause**
  - Fairness of laws and government actions.
  - The due process clause contains two parts.
    - First, life, liberty, or property must be involved to challenge state action denying it.
    - Second, once the Court makes a determination that a person's life or liberty, for example, is at stake, it must then decide if the state has denied it without due process of law.
Due Process, Continued. . .

- 5<sup>th</sup> Amendment states “No person shall be. . .deprived of life, liberty, or property, without due process of law.” *Applies to federal government only.*
- 14<sup>th</sup> Amendment states “No state shall. . .deprive any person of life, liberty, or property, without due process of law.” *Applies to state governments.*

Implication is that govt. must act *fairly and procedurally.*

**Procedural due process:**
- rights of the accused an example  
- constitutional limits on power of government  
- designed to protect individuals  
- meant to protect people against arbitrary or lawless punishments or penalties  
- “the idea that government must follow fair and generally accepted procedures in its actions against individuals.”  
- English in roots--> Colonists had due process in charters (*MA Body of Liberties* 1641); early nation had due process in *Northwest Ordinance of 1787* which regulated new territories; loosely the “law of the land.”

**Substantive due process:**
- Individual rights reinforced and extended by Supreme Courts in the 20<sup>th</sup> Century.  
  “Done through *substantive due process* and the *nation-wide application of federal Bill of Rights through 14<sup>th</sup> Amendment.*”  
- Deals with most fundamental rights of individuals.  
  o Religion  
  o Life  
  o Property  
  o Equality  
  o Participation in private organizations of choice.  
  - Government may not regulate these unless they demonstrate that they cannot achieve a legitimate public purpose (compelling interest) by any other means.  
- Done a case and right at a time; no overall incorporation because of early court case—Slaughterhouse Cases (1873)
  - 1890s – 1920s Court used substantive due process to protect the property rights of business owners against state government regulations of working conditions, wages, hours, safety, etc.  
  - 1930s – now (especially since the 1960s) the court has used substantive due process to protect the civil rights of individuals, especially racial minorities and women. The court has used substantive due process to invalidate state laws.
c. The court’s use of due process to protect individual rights specified in the Bill of Rights against infringement by state and local governments has been referred to as the *incorporation doctrine*.

Incorporation doctrine:

- **Critics say:**
  - distorts original intent of due process, which is procedural.
  - Interferes with legislative prerogative.
  - Suppresses states’ rights
  - Tool of activists courts

- **Proponents say:**
  - Needed to protect individual rights against states
  - Madisonian intent to limit power of any government that infringes upon inherent rights and liberties of people.
  - Applies individual liberties more evenly across the United States. Otherwise liberties would be more dependent upon the state one lives in.