I. INTRODUCTION

To appreciate fully the impact and genius of Chief Justice John Marshall, it is important to know the changes that were occurring not only in America but in Europe in the eighteenth century. Further, it is important to know about John Marshall, the man, and his many and varied contributions to the formation of this nation. His experience in the military, his travels, and the many positions in which he served in conventions and government as this nation was born gave him a unique perspective and broad knowledge. He was an outgoing, gregarious man with many friends and a reputation for building consensus among rivals. Marshall brought the wisdom he gained from these many experiences as well as his brilliance to a weak judicial system when he was appointed in January 1801 to fill the position of Chief Justice of the United States Supreme Court, where he served until his death on July 6, 1835.

II. MARBURY v. MADISON

As Marshall was working to professionalize the Court by (i) having the Court speak as one voice rather than each justice writing a separate opinion, thus presenting a clearer holding; (ii) bringing all the justices together to discuss cases among themselves and arriving at a consensus; (iii) separating the judiciary from politics; and (iv) foregoing the British tradition of wearing wigs and ornate ermine-trimmed red robes, the Court was presented with the case of Marbury v. Madison, 5 U.S. 137 (1803). See Gordon S. Wood, The Origins of Judicial Review Revisited, or How the Marshall Court Made More out of Less, 56 Wash. & Lee L. Rev. 787 (1999), http://scholarlycommons.law.wlu.edu/wlulr/vol56/iss3/3.

In the Judiciary Act of 1801, the Federalist Congress created new courts and additional judgeships. Having been defeated by Thomas Jefferson, President John Adams, pursuant to the Judiciary Act, filled these new judgeships shortly before he left office, creating the legend of the “Midnight Judges.” Richard A. Samuelson, The White House Historical Association, The Midnight Appointments, www.whitehousehistory.org. Marshall served as Secretary of State in Adams’ administration and, as such, was responsible for delivering the commissions to those appointed by the president in exercise of his constitutional power. William Marbury and others were appointed by President Adams as justices of the peace for the District of Columbia, the Senate advised and consented to the appointments, and President Adams signed the commissions before he left office. The seal of the United States was affixed by the Secretary of State. However, many of the commissions were not delivered before the transfer of power to the Democratic-Republican administration of Thomas Jefferson. Charles F. Hobson, The Great Chief Justice: John Marshall and the Rule of Law 48 (1996); William W. Van Alstyne, A Critical Guide to Marbury v. Madison, 1 Duke Law Journal 1 (1960).

Marbury and others never received their commissions, however, even after requesting that the new Secretary of State James Madison provide them. The Jefferson administration
considered the appointments not valid because they had not been delivered to the appointees by the Adams administration. Consequently, the appointees brought a mandamus petition in the Supreme Court seeking a rule requiring Secretary of State Madison to show cause why a mandamus should not issue directing Madison to deliver their commissions. See *Marbury v. Madison*, 5 U.S. (1 Cranch) at 137.

The case was delayed until February 1803 because the new Congress, with a Democratic-Republican majority, repealed the 1801 act, resulting in the loss of a term of court for the Supreme Court. Hobson, *supra*, at 48. Chief Justice John Marshall wrote the unanimous opinion for the Court holding that Marbury’s appointment became official upon the signing and sealing of the commission, whether or not the commission was delivered. However, despite its finding that a mandamus was the proper action, the Supreme Court held that it did not have jurisdiction to hear a mandamus case. Even though Congress seemingly granted original jurisdiction for the Supreme Court to hear such matters by the Judiciary Act of 1789, the Court held that this provision of the Act was in violation of the Constitution. Chief Justice Marshall noted that original jurisdiction was not specifically granted to the Supreme Court by the Constitution and the legislature cannot alter the Constitution when it shall “please to alter it” by attempting to expand the original jurisdiction of the Court. Thus, that provision of the Judiciary Act of 1789 was in violation of the Constitution and void. *Marbury*, 5 U.S. at 180. The Court held if an act of the legislature is in conflict with the Constitution, or repugnant to it, it is the Constitution that is superior. *Id.* at 178.

III. THE BACKGROUND OF JUDICIAL REVIEW IN AMERICA

*Marbury v. Madison*, John Marshall’s assertion of the authority of the Supreme Court to review federal, state and constitutional issues, is one of the most important decisions by the United States Supreme Court. Marshall clearly established the power of the Court, stating: “It is emphatically the province and duty of the judicial department to say what the law is.” *Marbury, supra*, at 177. If an act of the legislature is in conflict with the Constitution, or repugnant to it, it is the Constitution that is superior. *Id.* at 176-80. While judicial review was not exactly a new concept and was used in English courts and debated in some fashion in early America, this was the first time that there was a written constitution involved. In *Marbury*, Marshall enunciated the concept establishing the principle of judicial review as a matter of constitutional law. The term “judicial review” itself was not used in *Marbury*, however, and was not used to describe the principle for another hundred years.

A. The Colonial Judiciary, Revolution and Articles of Confederation

In Colonial America, the judges and courts were considered extensions of royal authority. The courts existed and the judges served at the pleasure of the king. Colonial courts were mistrusted by the people, resulting in attempts to enhance the power of juries and in codifying laws in the state legislatures. The proliferation of statutes caused chaos and greater discretion for judges who tried to make sense of it all. Eventually, this resulted in the people seeing the legislatures as a “threat to minority rights and individual liberties and in themselves

In a nutshell, this chaos resulted in the 1775 military confrontation between local militia and British troops in Concord and Lexington, marking the beginning of the Revolutionary War. In 1776 Thomas Jefferson drafted the Declaration of Independence drawing on John Locke’s natural rights philosophy, which proposes that the purpose of government is to protect these rights. Colonial citizens believed the English government was depriving people of their rights. Thus, they withdrew their consent to be governed by England, won their independence from England and formed their own government. Then, they were faced with the question of what type of new government would be strong enough to perform the duties of government but not so powerful that it would threaten the natural rights of the people.

In Federalist No. 10, Madison expressed his concern about the difficulty in developing a form of government to achieve this balance, noting that “the spirit of party and faction” was likely to be involved “in the ordinary operations of government.” He suggested that the way to prevent a party from becoming “a judge in his own cause” and “legislating majoritarian tyranny” was to create a system that would address the effects of factionalism in a large republic with many and varied factions and interests to reduce the chance that any one of them will become a majority, thus necessitating compromise and coalition building. See Matthew J. Franck, Misreading Federalist No. 10, National Review, Bench Memos (January 20, 2015).

In 1777, the Continental Congress adopted the Articles of Confederation, the first constitution of the United States, and the Articles were ratified by the thirteen states on March 1, 1781. The Articles of Confederation created a weak central government and a loose confederation of the sovereign states. In this environment, people began to see the courts as the “only body of men who will have an effective check upon a numerous Assembly.” Lynn W. Turner, William Plummer of New Hampshire, 1759-1850 34-35 (1962) (quoting Letter from William Plummer to William Coleman). During the debates for ratification of the Articles of Confederation, this issue was a topic of discussion. This history led to the great transformation in thinking in America that resulted in the judiciary becoming one of “the three capital powers of Government.” Address of the Convention (March 1780) in The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780 434, 437 (Oscar Handlin & Mary Handlin eds, 1966) (examining formation of Massachusetts government).

B. Constitutional Debate Concerning the Judiciary

In 1787, the Founding Fathers met in Philadelphia and drafted the Constitution creating a system of government in which the states retained their sovereignty and the powers not delegated to the national government by the people through the Constitution. The power and authority of the federal government was limited by the Constitution. To accomplish this, the
framers separated the branches of government - the legislative, the executive and the judicial - with the intent to keep any one branch from overpowering the other branches, thus jeopardizing the freedoms of the people. Each branch was given specified powers and duties that were designed to balance and to check the other branches.

Regarding the judiciary, the framers debated how judges should be selected and decided that rather than electing judges, as many of the states provided, they would be appointed “during good Behavior” to provide judicial independence. U.S. Const. art. III, § 1. Alexander Hamilton stated that lifetime tenure was “essential to the faithful performance” of their “arduous duty” as the “bulwarks of a limited constitution.” The Federalist No. 78 (Alexander Hamilton) 397 (Garry Wills, ed., Bantam Books 1982). Lifetime tenure gives federal judges the independence to review and check the actions of the other branches and the states, although this power is not specifically stated in the Constitution. Rather, it is the Supreme Court itself that has decided and stated that the federal judiciary has this power. See Wood, supra.

In 1788, Madison wrote “This makes the Judiciary Department paramount in fact to the Legislature, which was never intended and can never be proper.” See Madison’s Observations on Jefferson’s Draft of a Constitution for Virginia (1788), in 6 The Papers of Thomas Jefferson 308, 315 (Julian P. Boyd ed., 1950) (envisioning role for judiciary in checking laws against Constitution), quoted in Wood, supra, at 793.

Hamilton advocated for a stronger court system and argued in Federalist No. 78 that “judges had a right to oversee the acts of the presumably sovereign legislatures and to construe statutes and even set some of them aside if they thought they conflicted with either the federal or state constitutions.” See Wood, supra, at 793, referencing The Federalist No. 78, at 524-26 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) see n.28 (defending role of judiciary in invalidating acts of legislature). Hamilton implied that judges, though not elected, were agents or servants of the people with a responsibility equal to that of the other two branches of government to carry out the people’s will. This thinking eventually led to election of judges in many states. Wood, supra, at 793-794.


There were different alternatives proposed in the Constitutional Convention to address the concerns of unconstitutional legislation, but judicial review as we know it today was not one of them. Certainly, the framers did not see judicial review as “routine judicial business” but rather, to the extent they considered the concept at all, “as an exceptional act, to be exercised
C. Influences on Marshall - Blackstone and Lord Mansfield

In England, William Blackstone’s Commentaries expounded on the authority of judges to adapt and construe statutory law and fit it into the common law. Lord Mansfield, as chief judge of the Court of King’s Bench from 1756 to 1788, claimed that judges in their multiplicity of piecemeal decisions could control and transform the law more rationally than Parliament. Mansfield emphasized reason, equity, and convenience to bring the common law into accord with the new commercial needs of mid-eighteenth century British society. See Wood, supra, at 799-800, referencing David Lieberman, The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain (1989) (illustrating Mansfield’s idea of gradual improvements through judicial mechanism).

Marshall was a great admirer of Lord Mansfield and followed his example in adapting the common law to new commercial circumstances as well as fitting Blackstone’s set of rules for construing statutes into the body of common law and applying them to state and federal constitutions. Hobson, supra, at 37 (quoting John Marshall). Hobson states, “It was one of Marshall’s great achievements to apply ‘the familiar tools and methods of statutory construction. . .[t]o the novel task of expounding the Constitution of the United States.’” Hobson, id. at 199.

D. The Judiciary, Partisan Politics and Democracy

In the early days of government under the Constitution, judges, who had been performing non-judicial duties such as census-taking and governmental appointments, were giving up those duties and concentrating on professionalizing the courts. They withdrew from politics and focused on developing the law as an area of expertise. The Supreme Court from its beginning avoided giving extra-judicial opinions and only opined on matters arising from litigation. See Charles Warren, The Supreme Court in United States History 52-53 (1923).

When John Marshall became Chief Justice of the Supreme Court of the United States, he was “the last Federalist standing” as Thomas Jefferson’s Democratic-Republican party had taken over the legislative and executive branches of government. In Marbury v. Madison, Marshall chose not to challenge directly the Democratic-Republicans. Instead, relying on Article III, Section 2 of the Constitution whereby the Supreme Court was granted authority to decide cases arising under the Constitution, Marshall asserted the Court’s authority to interpret the Constitution by declaring a portion of the Judiciary Act of 1789 unconstitutional for having granted the Court original jurisdiction not specified in the Constitution. Despite Jefferson’s philosophy on the role of the judiciary, he conceded the right of the Court to interpret the Constitution in matters pertaining to the judiciary, although he never accepted the “revolution” in jurisprudence that Blackstone and Mansfield had created. Wood, supra, at 802-803, 806.
Marshall’s goal at that time was not so much a crusade for judicial supremacy as it was to isolate the judiciary from partisan politics as much as possible. In *Marbury*, Marshall separated legal issues from politics and noted that questions involving the vested rights of individuals were in their “nature, judicial, and must be tried by the judicial authority.” *Marbury*, 5 U.S. at 167. Others were also beginning to separate law from political or legislative matters and to develop the doctrine of separation of powers. The term “due process of law” entered the discussion in matters in which someone might be deprived of his rights. Wood, *supra*, at 807. The Rule of Law had been prevalent in England but had not extended to the concept of protecting an individual’s rights from laws enacted by the legislature. See, e.g., William Blackstone, *Commentaries on the Laws of England*, 1753.

Many were becoming disenchanted with the political world, including Marshall, so placing legal boundaries around issues such as property rights and contracts tended to isolate them from popular tampering, partisan debate, and clashes of interest-group politics. Even as American society became more democratic, some of the Democratic-Republicans came to fear the legal confusion and chaos that popular legislatures could create and looked to the judiciary for salvation. In 1805, Alexander Dallas argued on behalf of moderate Democratic-Republicans in Pennsylvania “rights would remain forever without remedies and wrongs without redress” without the protection of the courts. Wood, *supra*, at 808 n.108, quoting Richard E. Ellis, *The Jeffersonian Crisis: Courts and Politics in the Young Republic* 179 (1971) (quoting The Repertory (1805).

“The courts of justice are the visible organs by which the legal profession is enabled to control the democracy.” See Wood, *supra*, at 809 n.113, quoting Alexis De Tocqueville, *Democracy in America* 288-89 (Phillip Bradley ed., 1954). Wood, using Tocqueville, explains the impact Marshall and his fellow judges had on American democracy through their decisions in the partisan era of the early 1800s:

Tocqueville has a remarkable analysis of the American judiciary that captures as well as any account the achievement of Marshall and his generation of jurists to American adjudication. He points out that American judges possessed an immense degree of political power, yet this political power was subtle and hidden from view. See *id.* at 104. When an American judge makes a decision in his court, said Tocqueville, he shuns politics and avoids becoming the champion or antagonist of a party and thus prevents himself from confronting the legislators and their law directly. To do so “would have brought the hostile passions of the nation into the conflict.” *Id.* at 106. Instead, the American judge censures the law indirectly. “When a judge contests a law in an obscure debate on some particular case, the importance of his attack is concealed from public notice; his decision bears upon the interest of an individual, and the law is slighted on incidentally.”

IV. PRESENT DAY JUDICIAL REVIEW UNDER THE U.S. CONSTITUTION

A. Marshall’s Legacy: Establishing the Role of the Judiciary and Judicial Review

Marshall laid the foundations for the judiciary as a co-equal branch of government, judicial independence and the Supreme Court as the final arbiter of the Constitution. Judicial review was used sparingly before the Civil War, but expanded post-Civil War, when Marbury was cited for the first time as precedent for judicial review. Wood, supra, at 788-89. Today, and especially since the 1960s, judicial review has become a household word, although that term was not used until 1910 when it was brought to the forefront by Edwin S. Corwin, a Princeton professor, in his book The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays. Beginning in the 1950s and 1960s, the use of judicial review expanded and has become the subject of much discussion about what was intended in the Constitution.

Nevertheless, judicial review is used every day in courts throughout the nation. The constitutionality of a statute or the implementation of a statute is always in the mind of the attorneys and the judges in every case. Not every case requires an actual constitutional review of the law or the facts, but there is always an awareness of its availability.

Needless to say, judicial review in America is as important today as it was when it was first utilized in Marbury v. Madison. Cases in which judicial review has been used through the years are well-known and often surrounded by intense political interest. In one of the more recent and well-known cases, King v. Burwell, 276 U.S. ___, 759 F. 3d 358 (2015), Chief Justice John Roberts upheld the Obama-era Affordable Care Act following Chief Justice Marshall’s handling of Marbury v. Madison. This was a case heard and decided in a politically charged environment as were many of the best-known judicial review cases.

Many of the cases in the 1950s, 1960s and after demonstrate the expansion of the use of judicial review. They involve voting rights, school segregation, interracial and same sex marriage, discrimination of any kind, including sexual preference, religious issues, police conduct, etc. The U.S. Courts website, http://www.uscourts.gov, includes an educational resources section that provides a list of landmark cases illustrating judicial review. A list of selected U.S. Supreme Court Landmarks is found below.

Marbury v. Madison is only one of many cases decided by the Marshall court that were significant in the development of our form of government and the judicial and legal systems. Remarkably, Chief Justice John Marshall wrote most of these significant opinions of the Court himself. Many of them relied on the doctrine of judicial review established in Marbury.

B. Other Landmark Cases of the Marshall Court—Gibbons and McCulloch

Two of the most momentous landmark cases of the Marshall court are Gibbons v. Ogden and McCulloch v. Maryland. In McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice
Marshall stated the weight of responsibility and importance of the decisions of the Supreme Court:

In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State. The Constitution of our country, in its most interesting and vital parts, is to be considered, the conflicting powers of the Government of the Union and of its members, as marked in that Constitution, are to be discussed, and an opinion given which may essentially influence the great operations of the Government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps, of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the Constitution of our country devolved this important duty.

*Id.* at 401.

*McCulloch v. Maryland* involved an act of Congress that chartered the Second Bank of the United States and a Maryland statute that taxed the Bank. The Supreme Court, with Chief Justice Marshall writing the unanimous opinion, held that Congress had the power to incorporate the Bank even though it was not enumerated in the Constitution and that the Maryland tax was unconstitutional and thus void. He stressed that the Constitution prevails over state law, that the Constitution was ratified by the people, not the states, as was argued by Maryland, and thus is of the people and supreme. Accordingly, judicial review was expanded to apply in cases involving state actions contrary to the Constitution. *Id.* at 430-33. The Court also elaborated on the Necessary and Proper Clause of the Constitution to state that it was not a limit on Congress but rather enabled Congress to carry out its enumerated powers and responsibilities. *Id.* at 415, 420-21.

In *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), the Supreme Court expanded the powers of Congress under the Commerce Clause, U.S. Const. art. 1, § 8. In an opinion written by Chief Justice Marshall, the Court ruled that under that clause Congress had powers to regulate any aspect of commerce that crossed state lines, including modes of transportation, and that such congressional regulation preempted conflicting regulation by the states. The controversy in *Gibbons* resulted from a statute enacted by the New York legislature granting Robert Fulton and Robert Livingston an exclusive right to operate a steamboat in New York waters. Thereupon, Fulton and Livingston licensed Ogden to operate a ferry between New York and New Jersey. Later, Gibbons began operating a ferry, licensed under a statute enacted by Congress, that necessarily entailed Gibbons entering New York waters, thereby violating Ogden’s monopoly. *Id.* at 1-3. Ogden obtained an injunction against Gibbons from a New York court. The issue before the Supreme Court was whether the New York court’s injunction against Gibbons’ license was lawful. It was not. The Supreme Court held that the New York statute prohibiting vessels licensed by the United States was repugnant to the Constitution and thus...
was void. Thus, by using judicial review, the Marshall court established that regulation of navigation by steamboat operators and others for the purposes of conducting interstate commerce was a power reserved to Congress. Only Congress, not New York, had the authority to regulate interstate navigation. *Id.* at 240.

C. Judicial Review Today

What is the relevance today of these cases establishing the principle of judicial review? After all, judicial review is not mentioned in the Constitution. Today, the Supreme Court plays a very important role in our constitutional system of government. First, as Chief Justice John Marshall and the Marshall court established,

[A]s the highest court in the land, it is the court of last resort for those looking for justice. Second, due to its power of judicial review, it plays an essential role in ensuring that each branch of government recognizes the limits of its own power. Third, it protects civil rights and liberties by striking down laws that violate the Constitution. Finally, it sets appropriate limits on democratic government by ensuring that popular majorities cannot pass laws that harm and/or take undue advantage of unpopular minorities. In essence, it serves to ensure that the changing views of a majority do not undermine the fundamental values common to all Americans, *i.e.*, freedom of speech, freedom of religion, and due process of law.

http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about

So just what is judicial review? It is the power of the United States federal and state courts to invalidate governmental actions, including statutes enacted by the legislative branch, on the ground that they are inconsistent with the United States Constitution and thus are void. It forms the basis for the Rule of Law in the United States. Because of judicial review, the courts, and ultimately the Supreme Court, make the final determination as to the constitutionality of acts of the legislative and executive branches of government.

How do judges handle cases in which judicial review is an issue? What are the considerations? First, the judge must determine whether the court has jurisdiction. He or she must find the court has subject matter jurisdiction, *i.e.*, the court has the authority to hear the subject matter of the case or controversy. *U.S. Const. Art. III, § 2, cl. 1, amended by U.S. Const. amend. XI.* The judge must also assure that the court has jurisdiction over the parties, known as personal jurisdiction. There may also be a question of geographic jurisdiction in some cases. Then there is the issue of the *justiciability doctrine.* There must be “actual cases or controversies.” *U.S. Const. art. III, § 2, cl. 1.* For instance, the court may find there is a timing issue because the harm has not yet occurred or may or may not occur in the future, thus being unripe for adjudication. Or the court may find a matter is no longer in controversy and thus is moot. A court will refuse to hear a case if it finds the case presents a political question, such as
a case that deals directly with an issue that the Constitution makes the sole responsibility of the executive or legislative branch. Lastly, there is the issue of standing, meaning that the party bringing the case must have an actual stake or interest in the controversy. These doctrines impose limitations on the federal, state and local courts. See Lia Bilmayer, Judicial Review, Justiciability and the Limits of the Common-Law Method, B.U. Law Rev. (1977). Faculty Scholarship Series Paper 2521. http://digitalcommons.law.yale.edu/fss_papers/2521.

Every lawyer must be prepared to answer the questions of jurisdiction of the court over the subject matter, personal jurisdiction over the parties, justiciability, and standing. Once these preliminary issues are resolved, the court will proceed to hear and adjudicate the case based on the law and evidence presented. If the issue of the constitutionality of a law or the implementation of a law is raised at trial, the judge will make a determination of the constitutionality of the law or its implementation. Upon final adjudication, the parties will decide whether to appeal the trial court’s decision. Thus, the principle of judicial review is alive and well in the courts throughout the United States of America each and every day.

Bibliographical Note: The Panel is responsible for the content of this Outline but is indebted to two authors whose works are important to an understanding of judicial review and Chief Justice John Marshall’s defining role in it, Charles F. Hobson and Gordon F. Wood. Professor Hobson is a resident scholar at the William and Mary School of Law and one of the editors of The Papers of John Marshall (Univ. of N.C. Press and Omohundro and Institute of Early American History and Culture). His book, The Great Chief Justice: John Marshall and the Rule of Law (Univ. Press of Kansas 1996) is recommended to anyone interested in Marshall and his contributions to American jurisprudence and the emergence of the judiciary as a co-equal branch of government. Many of the primary and secondary sources concerning the colonial and Constitutional eras quoted in this outline were assembled by historian Gordon S. Wood in his article The Origins of Judicial Review Revisited, or How the Marshall Court Made More out of Less, 56 Wash. & Lee L. Rev. 787 (1999). Prof. Wood is Emeritus Professor of History, Brown University, a recipient of the 1993 Pulitzer Prize for History, and we are also in his debt.
U.S. Supreme Court Landmarks

Brown v. Board of Education, 347 U.S. 483 (1954) Declares that local school systems that segregate students based on their race are unequal and unconstitutional.

Cooper v. Aaron, 358 U.S. 1 (1958) States cannot nullify federal court decisions on the basis that the courts violated the Constitution.

Engel v. Vitale 370 U.S. 421 (1962) A local school system cannot require that each day begin with a prayer because it would be a state-sponsored religious activity.

Gideon v. Wainwright, 372 U.S. 335 (1963) The Sixth Amendment requires that indigent criminal defendants be provided an attorney free of charge.

Miranda v. Arizona, 384 U.S. 436 (1966) Police must inform suspects of their rights, including their right to counsel and to remain silent before questioning them.

Tinker v. Des Moines Ind. School District, 393 U.S. 503 (1969) Students who wore black armbands to school to protest the Vietnam War were removed from school when they refused to take off the armbands at the direction of the school administration. The Supreme Court ruled their actions were entitled to First Amendment protection.

U.S. v. Nixon, 418 U.S. 683 (1974) When a special prosecutor subpoenaed audiotapes of conversations in the President’s Oval Office, the President was not allowed to refuse to release them on the assertion of executive privilege. In that case, the defendants’ right to due process, including exculpatory evidence outweighed the President’s right to the privilege if national security was not compromised.

Goss v. Lopez, 419 U.S. 565 (1975) Once a state provides for education for its citizens, its students cannot be deprived of that education through disciplinary suspensions without providing due process protections.

New Jersey v. T.L.O., 469 U.S. 325 (1985) A principal searched a student’s purse and found cigarettes and marijuana paraphernalia. She had been accused of smoking in the bathroom. After a state court found her to be a delinquent, she appealed. The Supreme Court ruled that her rights to be free from an unconstitutional search were not violated because students have reduced rights to privacy at school.

Bethel School District #43 v. Fraser, 478 U.S. 675 (1987) Students do not have a protected First Amendment right to make vulgar or obscene speeches in school inconsistent with the values of a public education.

Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988) A local public school principal may edit articles in a school-sponsored newspaper that do not reflect school values without violating the students’
freedom of expression. The ruling does not apply to personal, non-school-sponsored communication.

_Texas v. Johnson_, 491 U.S. 397 (1989) A protester was arrested by local authorities for burning an American flag. The Supreme Court held, even though offensive, the speech was symbolic speech protected by the First Amendment.

http://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks