LANDMARK CASES & FOUNDATIONAL DOCUMENTS

AP Government Review

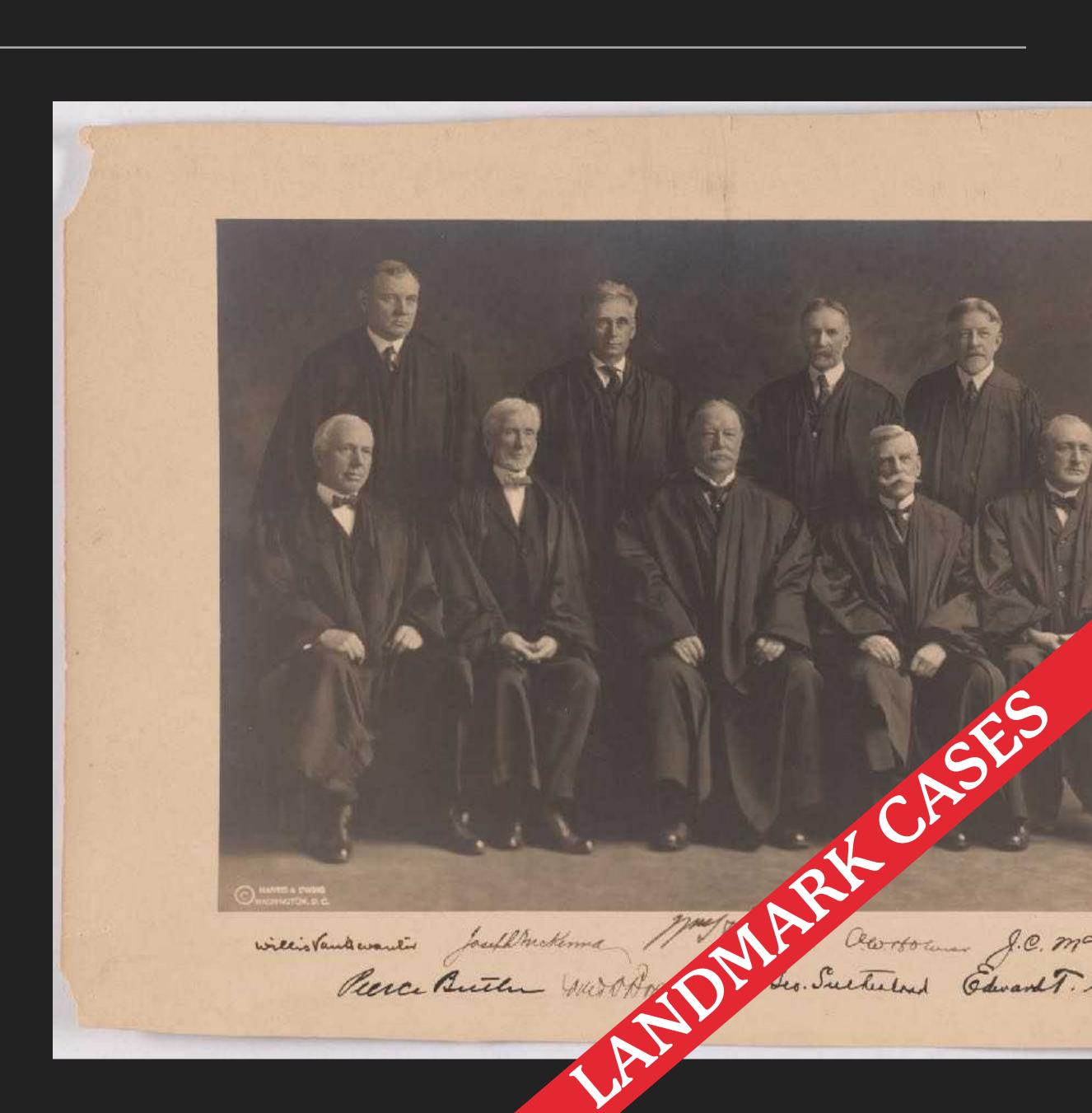
Landmark Cases



JUDICIAL REVIEW

MARBURY V. MADISON

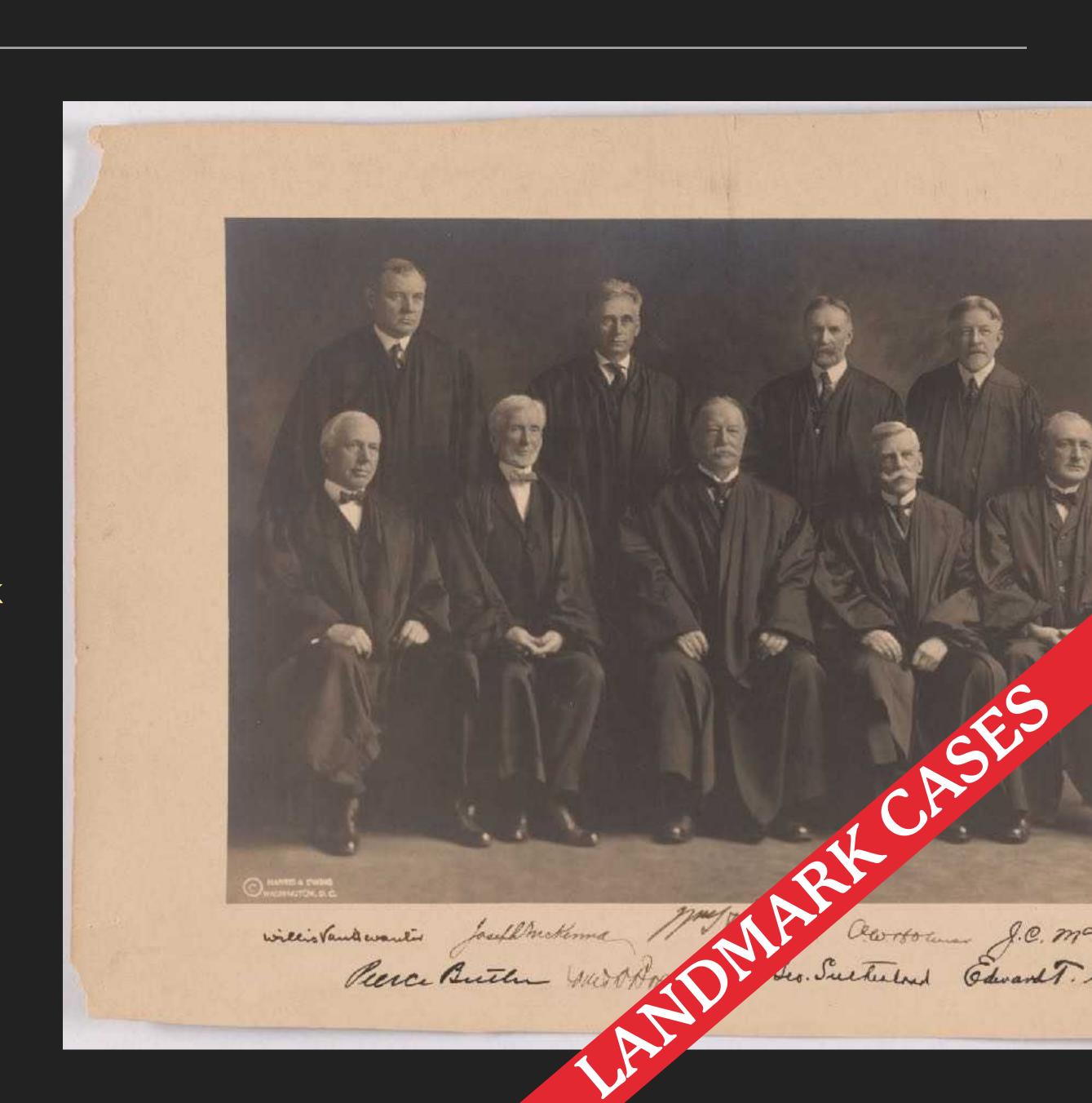
- Marbury v. Madison (1803) established the principle of judicial review—the idea that the courts can determine whether a law is constitutional.
- The Court ruled that the Jefferson Administration was wrong not to deliver commissions to John Adams's midnight judges. The Court ruled that its review was a new power—so the judges did not need to get their jobs—but established its power and the idea that the Constitution was law, not principle.
- The decision was 4-0.



STATE AND FEDERAL POWER

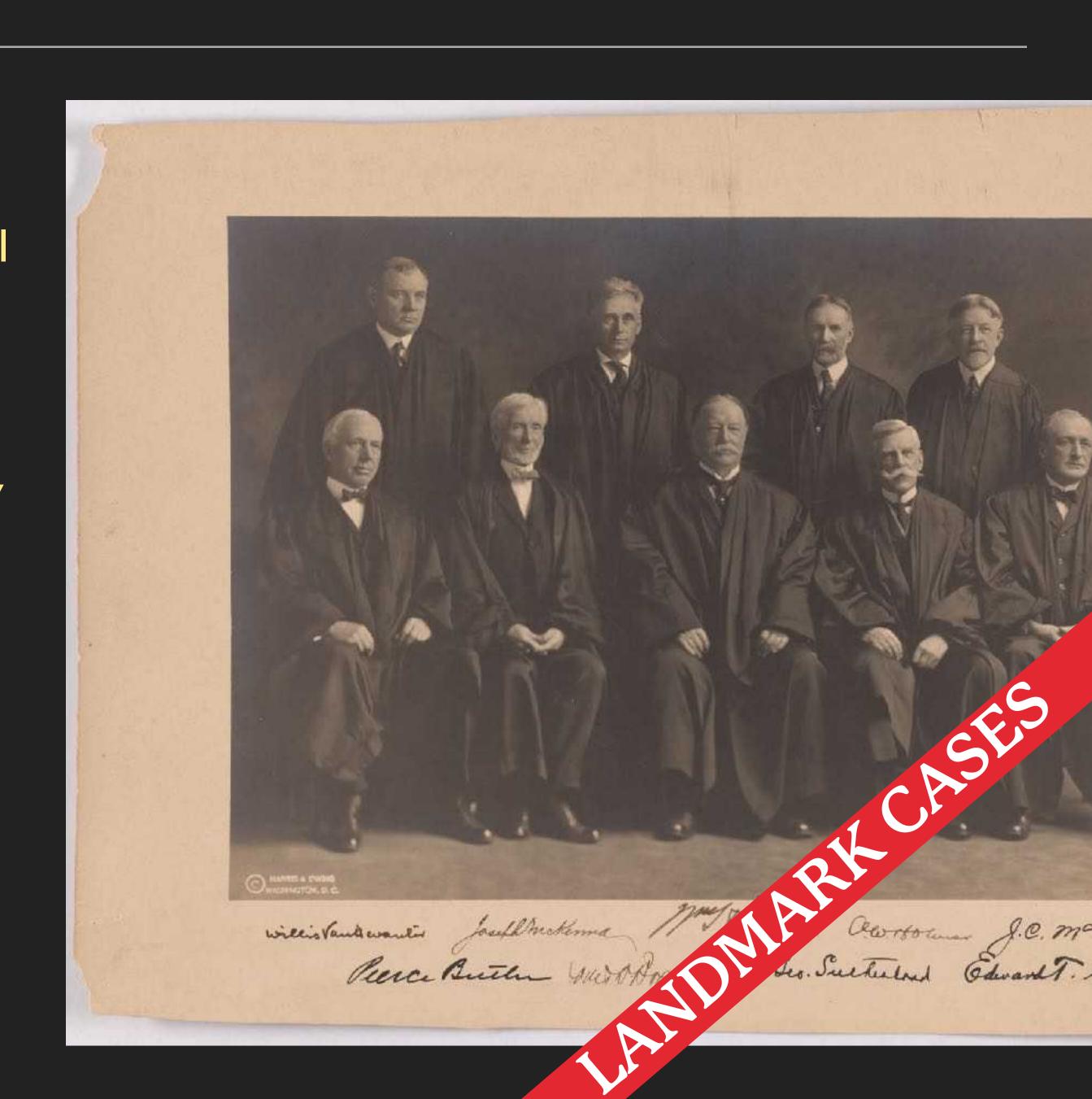
MCCULLOCHV. MARYLAND

- McCulloch v. Maryland (1819) cemented the supremacy of federal law over state law in a dispute over the creation of a national bank.
- The Court ruled that the Congress had the power to create a national bank and that Maryland could not tax it.
 - The Court reasoned that, while creating a bank was not an enumerated power, it was an implied power of the federal government.
- This affirmed the central role of the Supremacy
 Clause and gave more breadth to the
 Necessary and Proper clause.
- It was a unanimous decision.



U.S V. LOPEZ

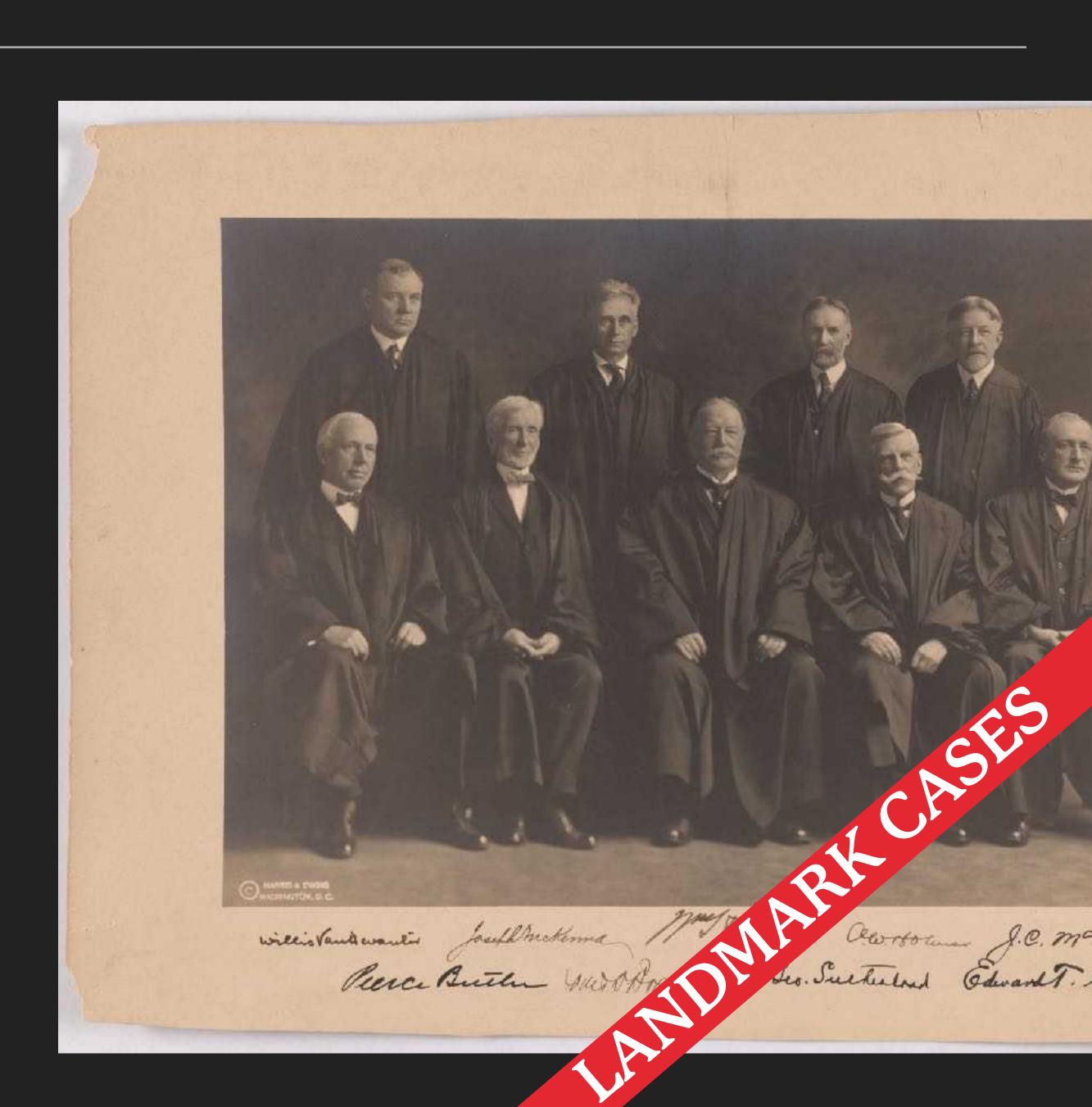
- US v. Lopez (1995) was a 5-4 decision that affirmed the rights of states, striking down a federal law prohibiting firearms on schools grounds.
 - The Court reasoned the the Commerce Clause did not extend to the regulation of firearms because it was not an economic activity and, therefore, did not relate to interstate commerce.
 - The dissenters argued that
 - Regulating gun violence was economic activity
 - Congress could exercise its power on a rational basis.



FIRST AMENDMENT: PRESS

NEW YORK TIMES V. US

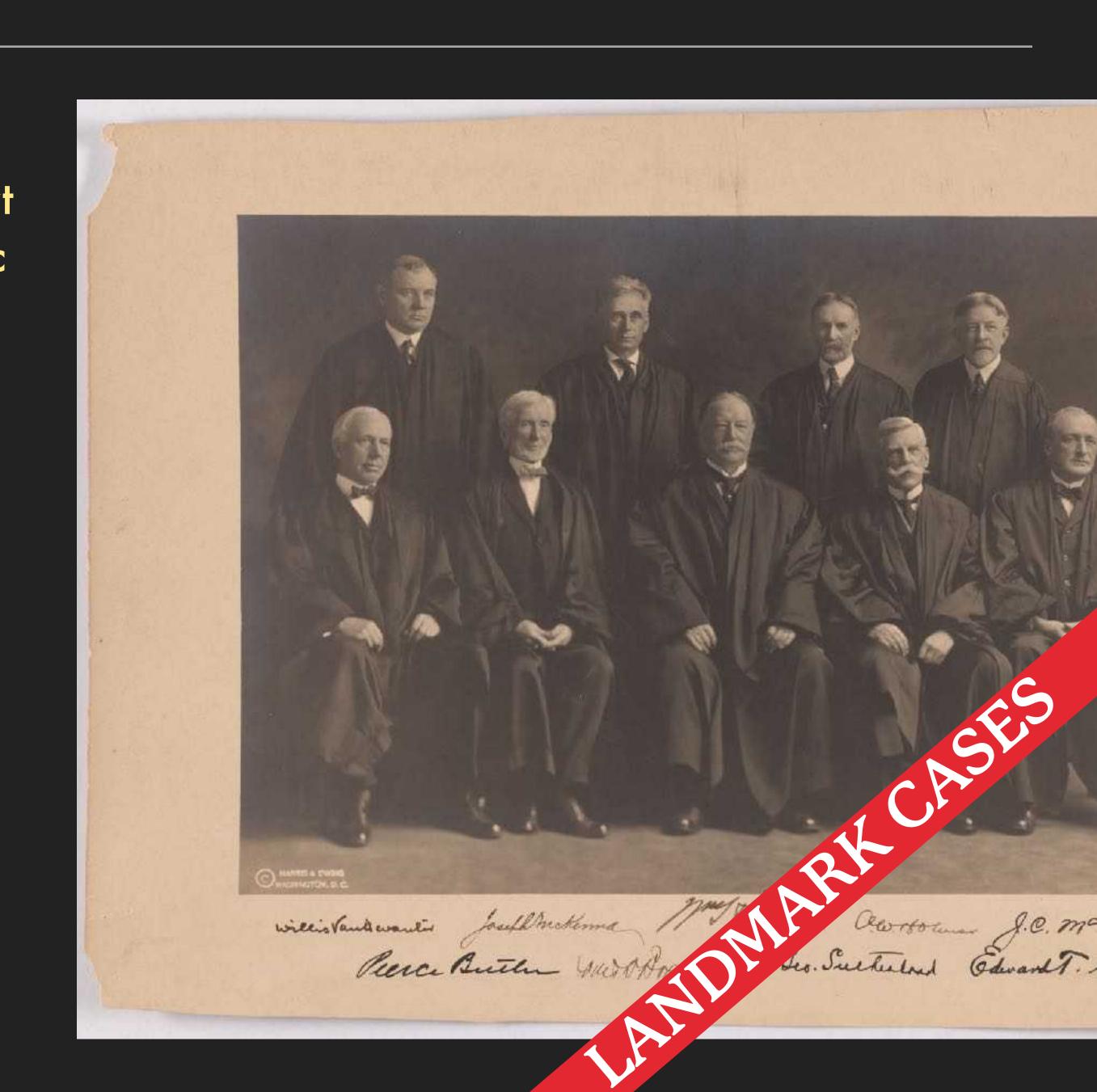
- In New York Times v. United States (1971), a 6-3 court ruled that prior restraint of the press carried a heavy burden for the government to prove and ruled the NYT could publish the Pentagon Papers.
- The justices voting for the New York Times expressed a wide range of beliefs, from the claim that prior restraint was never permissible to a defense in this case.
- The dissent argued that the powers of the Executive in Article II needed to be balanced against the First Amendment.



FIRST AMENDMENT: SPEECH

TINKER V. DES MOINES

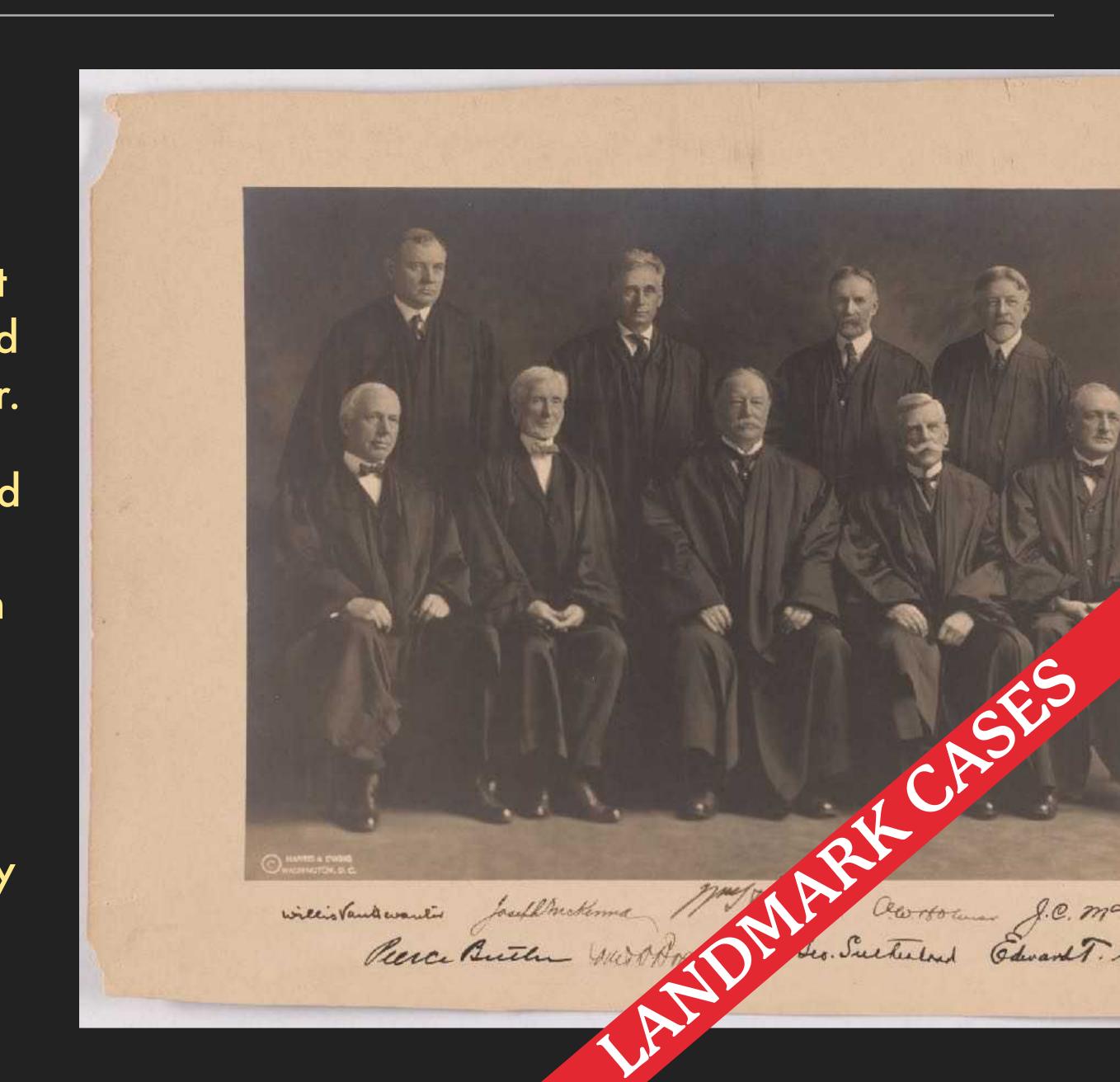
- In Tinker v. Des Moines (1969) the Court ruled 7-2 that students and teachers in public schools had the right to First Amendment expression unless it created a "material and substantial disruption" to education.
- This created the Tinker test.
- The dissenting justices argued that First Amendment rights can be constrained in certain places and that the black armbands the students wore to protest the war were a disruption.



FIRST AMENDMENT: SPEECH

SCHENCK V. UNITED STATES

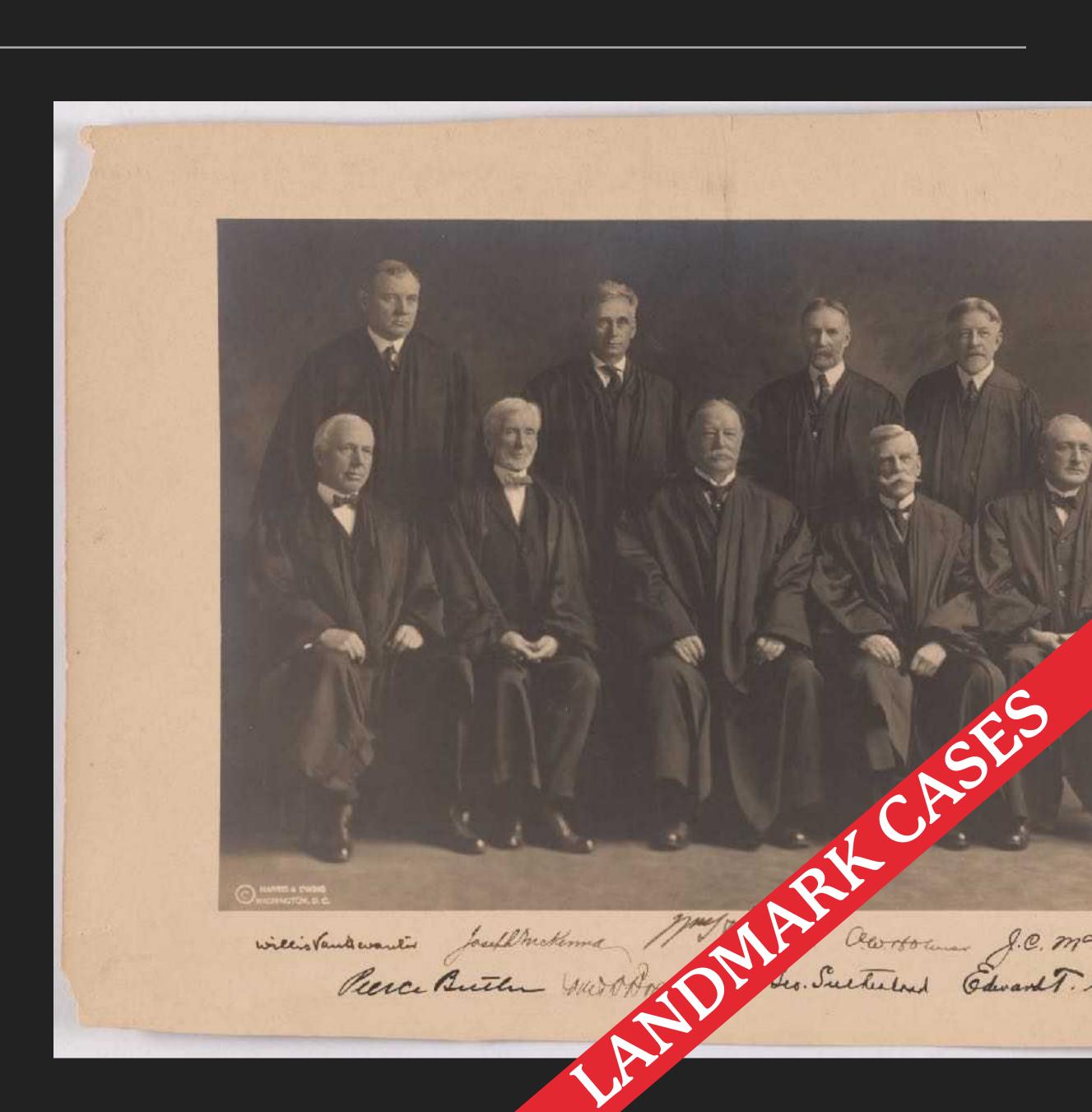
- In Schenck v. United States (1917), the Court established the clear and present danger doctrine when it ruled that a Socialist named Charles Schenk was rightfully convicted under the Espionage Act for criticizing the war.
- The court ruled unanimously that Congress had the power to exercise prior restraint stopping speech before it happens rather than punishing for the speech after.
- In 1969, the Court shifted its doctrine, establishing that such speech had to 1) be directed at inciting unlawful action and 2)likely to produce it.



FIRST AMENDMENT: RELIGION

ENGEL V. VITALE

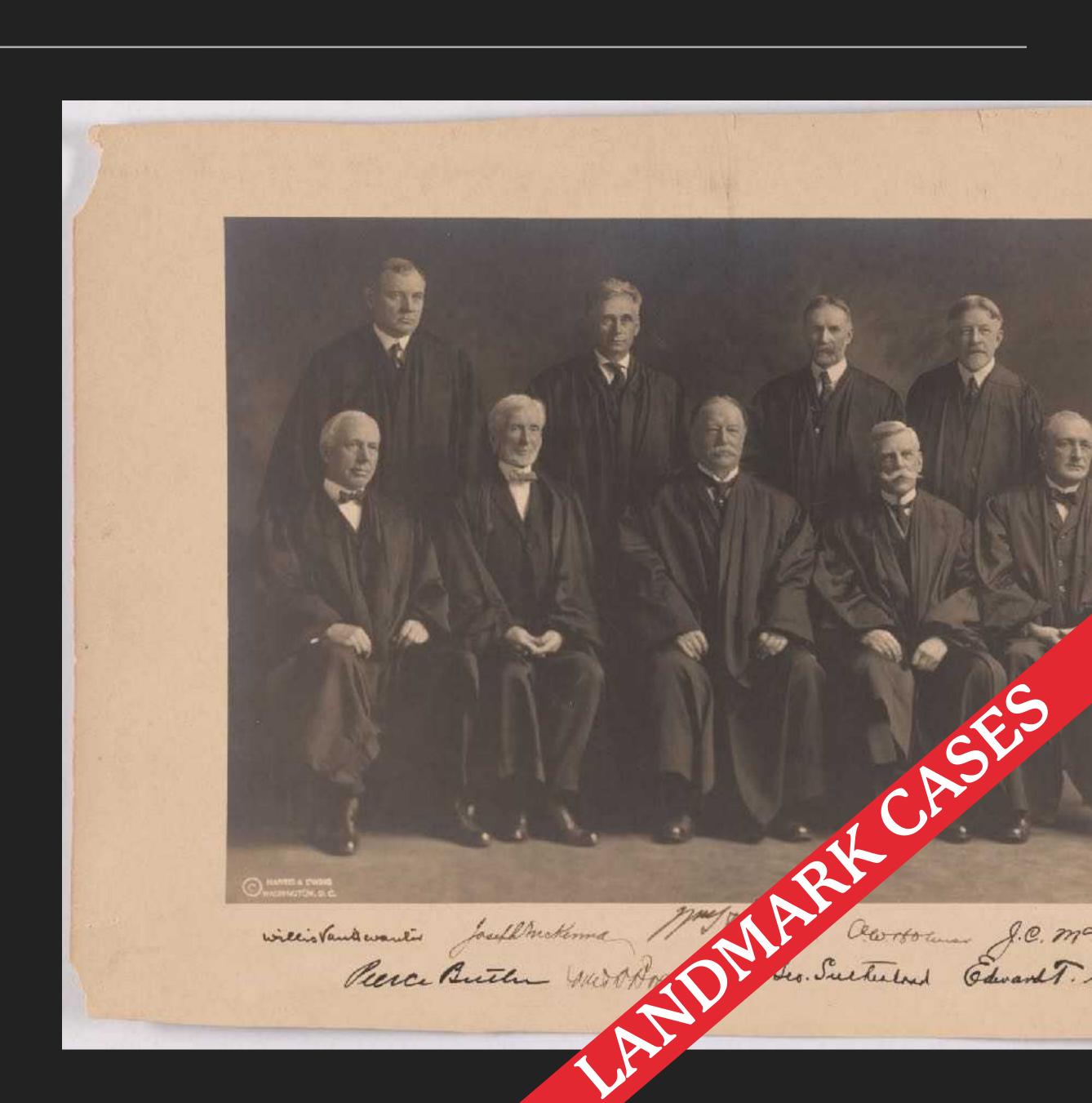
- In Engel v. Vitale (1962), a 6-1 Court ruled that a school-sponsored prayer in New York public schools violated the Establishment Clause of the First Amendment.
- The dissent argued that the school prayer was voluntary and that it protected the religious tradition of the United States.
- Engel ended school-led prayer in public schools, but protects the rights of students to express their religious views.



FIRST AMENDMENT: RELIGION

WISCONSIN V. YODER

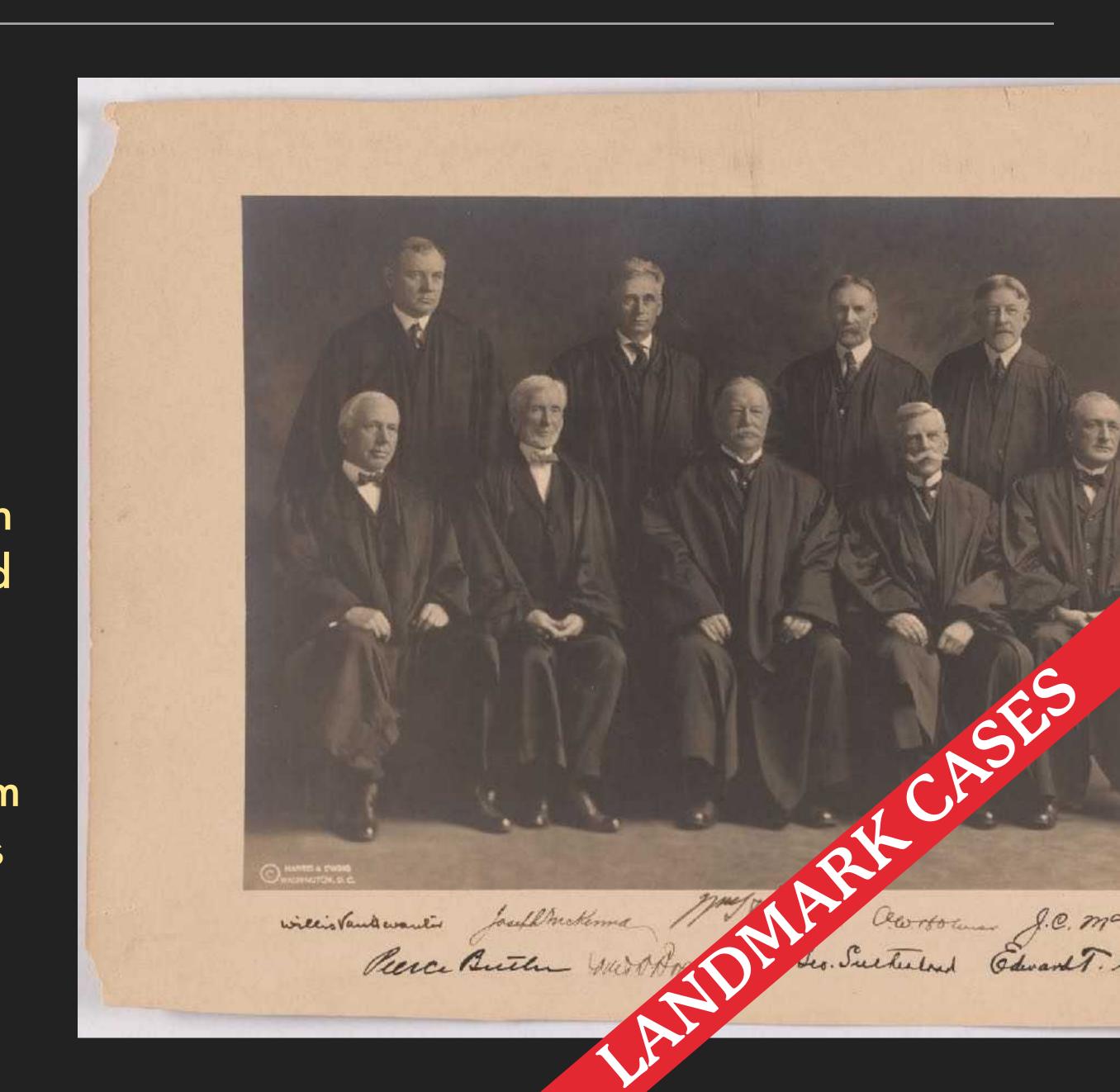
- In Wisconsin v. Yoder (1972), the Court ruled 7-0 that the free exercise clause prevented the state of Wisconsin from compelling parents to send children over 14 to school.
- They rejected the claim that there was a compelling state interest that would justify violation of religious beliefs.
- However, the Court ruled in 1990 that the state could criminalize peyote, even though it is used in Navajo religious ceremonies.



SECOND AMENDMENT: GUN RIGHTS

MCDONALD V. CHICAGO

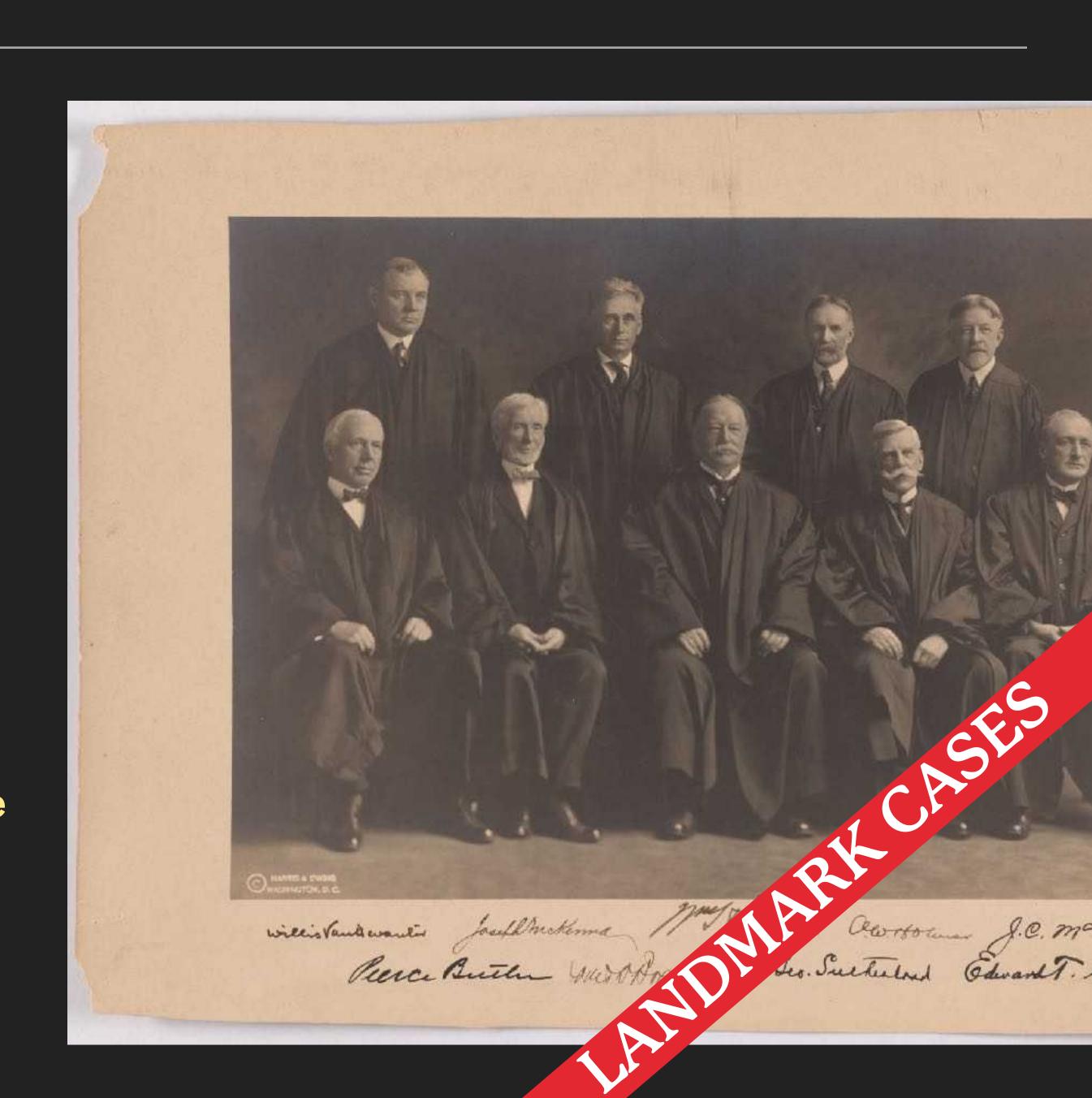
- In McDonald v. Chicago (2010), a 5-4 Court ruled that the 2nd Amendment right to bear arms applies to the states, striking down a Chicago ban on handguns.
- The McDonald decision reaffirmed the Heller precedent that gun ownership was an individual right, but affirmed that states could have some regulations in place.
- The dissent argued that the Second Amendment was written to protect states from federal encroachment and not needed in this case.



SIXTH AMENDMENT: RIGHT TO COUNSEL

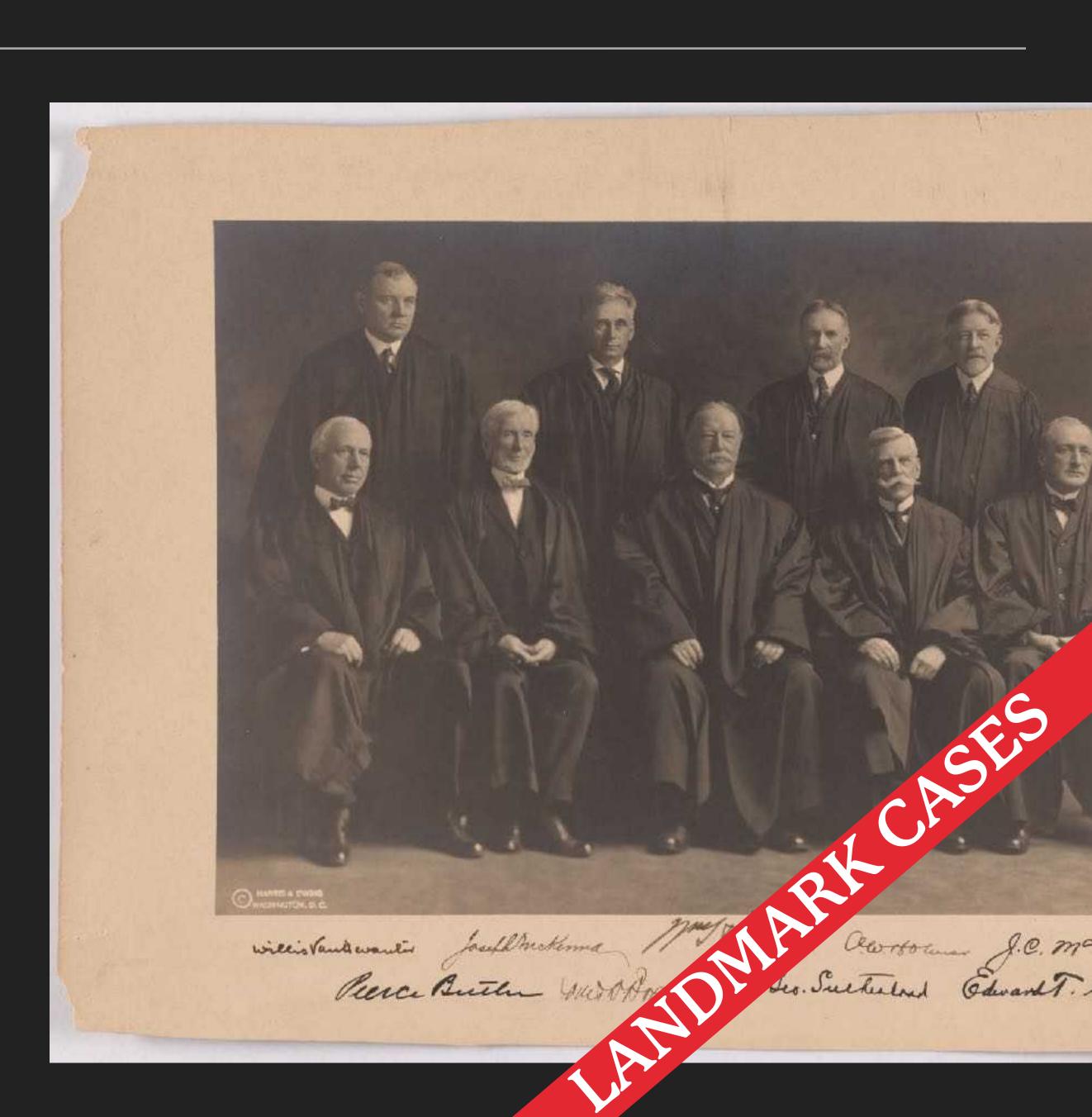
GIDEON V. WAINWRIGHT

- In Gideon v. Wainwright (1963), the Court ruled unanimously that Clarence Gideon deserved an attorney when charged with a Florida felony.
- The Court applied the 6th Amendment right to counsel and the 14th Amendment right to due process of law to state crimes, part of the slow march of selective incorporation.
- While Gideon did extend the right to defense to indigent people, states across the US have failed to fund public defender offices.



ROEV. WADE

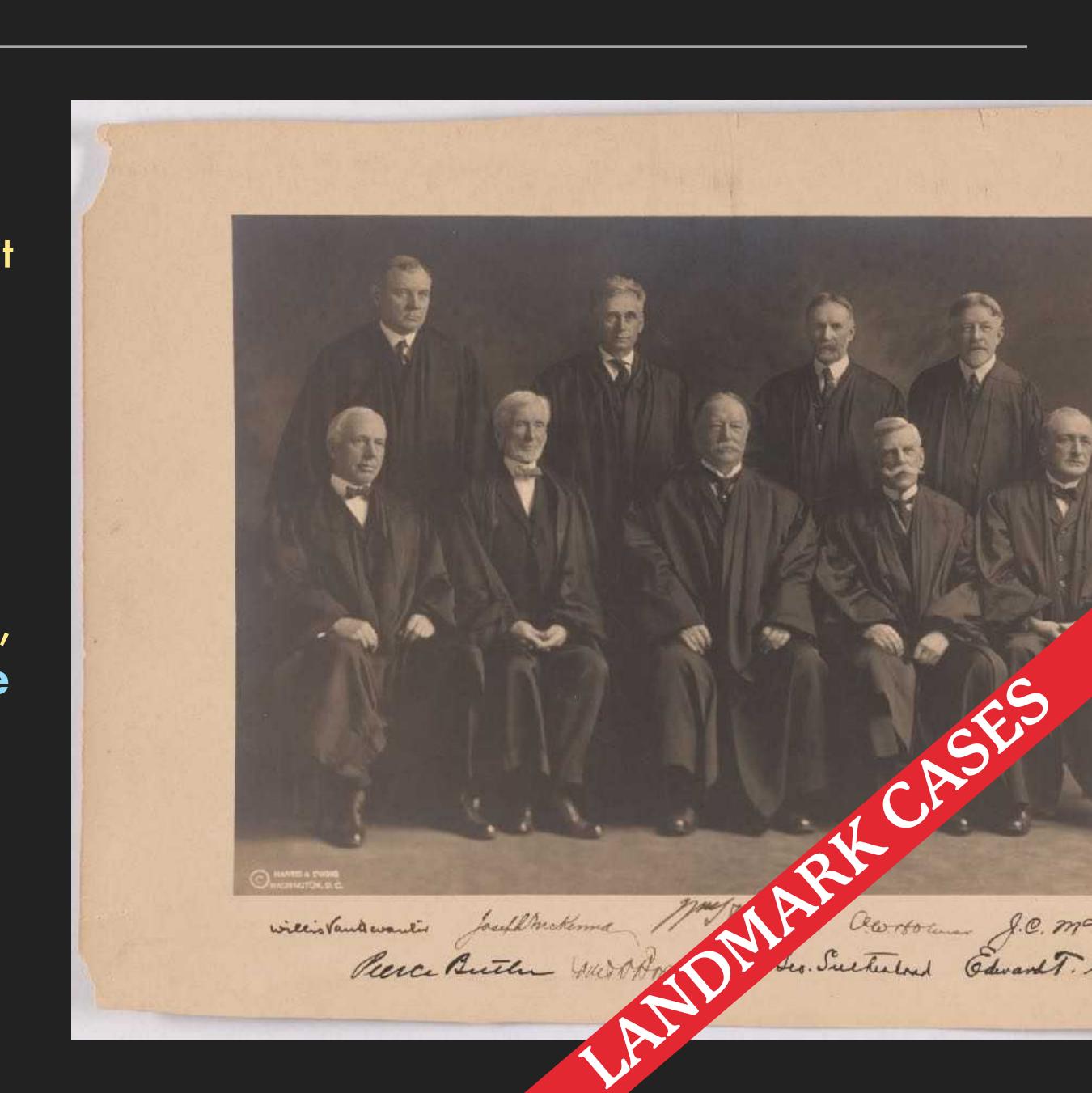
- In Roe v. Wade (1973), the Court ruled 7-2 that women have a 14th Amendment due process right to abortion and that the right to **privacy** (not explicitly in the Constitution) applied.
- The Court ruled that these rights could be balanced against state interests, creating the three tiers of Roe based on trimesters.
 - 1st: no state restrictions
 - 2nd: states can regulate abortion
 - 3rd: states can prohibit abortion
- The dissents argued that there was no constitutional right to an abortion and that privacy rights did not apply.



CIVIL RIGHTS: SEGREGATION

BROWN V. BOARD OF EDUCATION

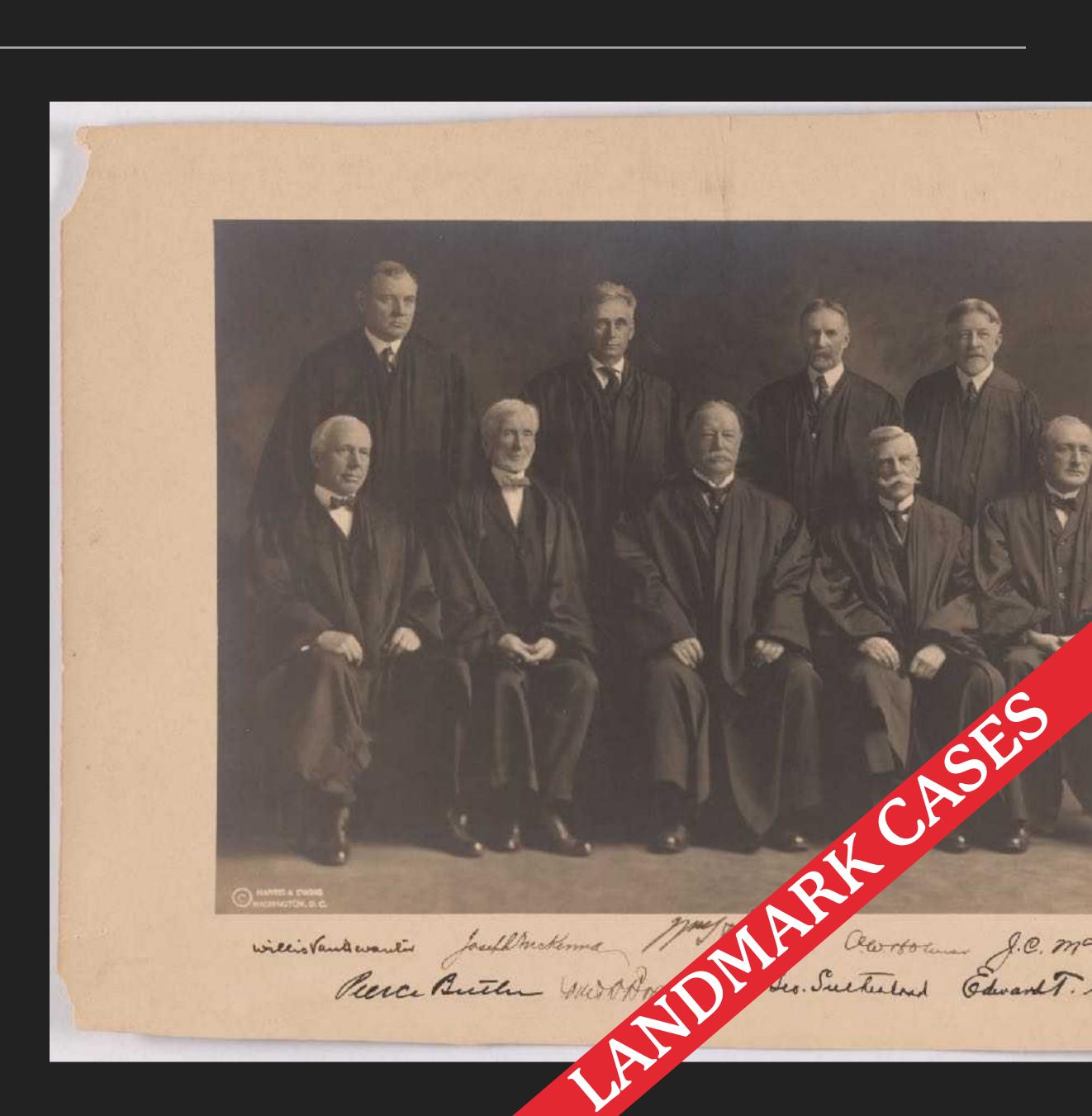
- In Brown v. Board of Education of Topeka (1954), a unanimous court ruled that segregation was not permissible in public schools and ordered desegregation with "all deliberate speed" because it violated the Equal Protection Clause of the 14th Amendment.
- The decision overturned Plessy v. Ferguson, which had affirmed the doctrine of "separate but equal."
- While Brown slowly led to desegregation across various sectors of American life, its impact in schools was blunted by Supreme Court decisions in the 1970s.



VOTING RIGHTS

BAKER V. CARR

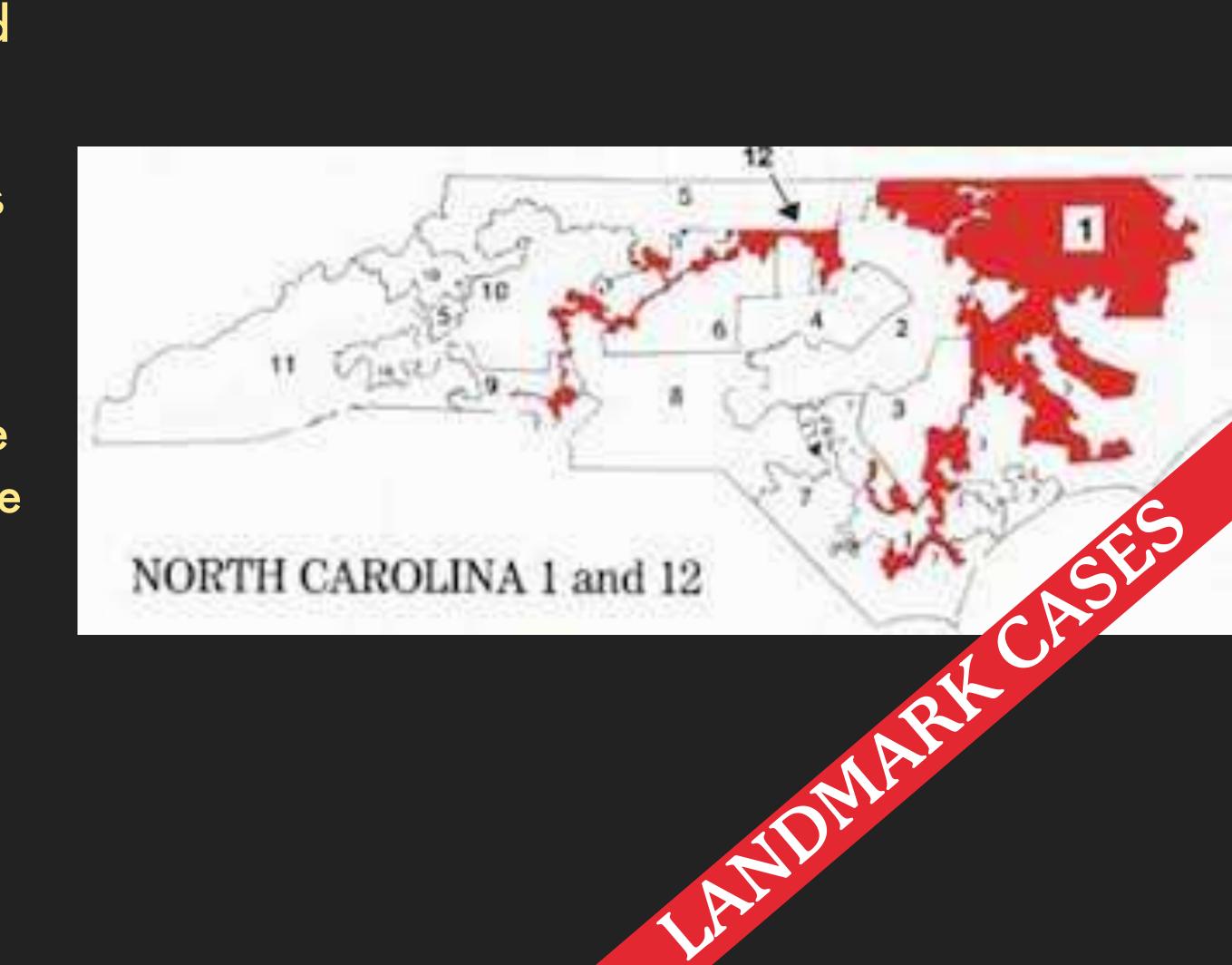
- In Baker v. Carr (1962), a 6-2 court ruled that state legislative districts also had to follow the "one man, one vote" principle.
- Many states had not adjusted representation for decades, so rural counties had disproportionate representation.
- The Court applied the 14th Amendment and argued that the court could intervene in districting to preserve the Equal Protection Clause.
- The dissent argued that the 14th Amendment was limited to questions of discrimination.



VOTING RIGHTS

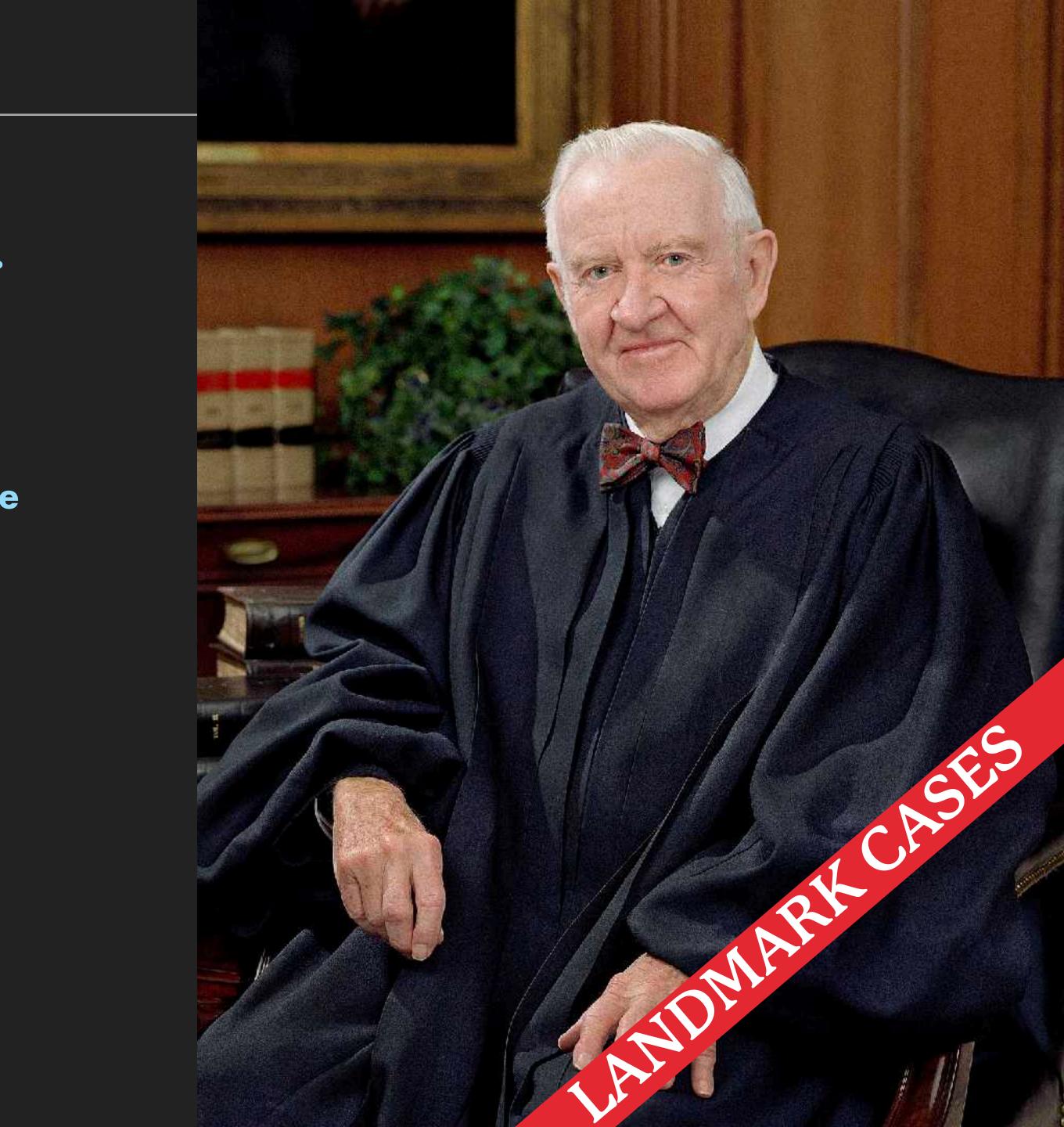
SHAW V. RENO

- In Shaw v. Reno (1993), a 5-4 court ruled that a North Carolina district was constructed to disenfranchise Black voters.
- The Court held that court could block districts that were racially gerrymandered for violations of the Equal Protection Clause.
- Those dissenting argued that a) people of the same race often share views and b) that some race-based gerrymandering is inevitable.
- Today, some are challenging states that create majority-minority districts using Shaw as precedent.



CITIZENS UNITED V. FEC

- In a 5-4 decision, the Court ruled in Citizens United v. FEC (2010) that:
 - The First Amendment prohibits restrictions on political speech.
 - In effect, corporations and unions, among others, are regarded as holders of individual rights.
 - According to Senate Leader Mitch McConnell, the decision was "an important step in the direction of restoring the First Amendment rights."
 - According to Justice John Paul Stevens, it was "a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government."
- The result of Citizens United has been an explosion in spending on dark money in American elections.





Foundational Documents

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THE DECLARATION OF INDEPENDENCE

- Thomas Jefferson was the chief writer of the Declaration of Independence, which
 - Identified the violations of liberty by King George III as justifications for rebellion.
 - Established the argument that certain rights are unalienable.
 - Asserted the legitimacy and act of independence from Britain.
 - argued government depended on the consent of the governed.



ARTICLES OF CONFEDERATION

- The Articles of Confederation created a weak, limited central government:
 - Sovereign states
 - One vote per state, any could veto
 - No President/Judiciary
 - No taxation, no standing army

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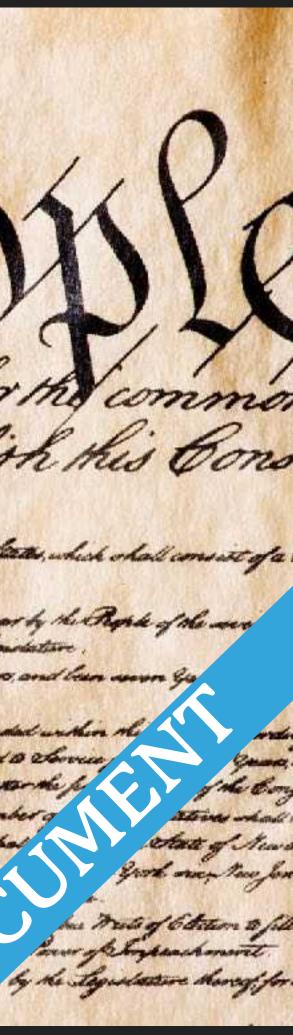
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CONSTITUTION

- The Constitution rests on the idea that the government needed to be strong enough to preserve order but not so strong that it would undermine liberty, a balance between democracy and elite power.
- The Great Compromise created the House (based on population) and the Senate (two per state).
- The 3/5th Compromise ("the original stain") counted slaves as 3/5 a person for representation.

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BASIC PRINCIPLES OF CONSTITUTION

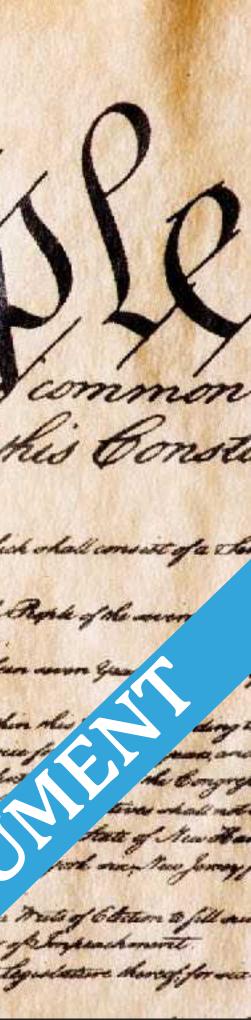
- The American government should be a republic, a system of representative democratic government.
 - They feared that democracy would devolve into mob rule or oligarchy.
- Popular Sovereignty: government can only rule with the consent of the governed.
- Checks and Balances: the power of each branch should be limited by the powers of the other branches.



BASIC PRINCIPLES, PART 2

- **Federalism**: The power of government should be divided between the federal government and the states.
- Limited government: There should be written and explicit limits to the power of government.
- Separation of Powers: power should be divided between the legislative, executive, and judiciary.
- Amendments: The Constitution should be able to change, though change should be difficult.

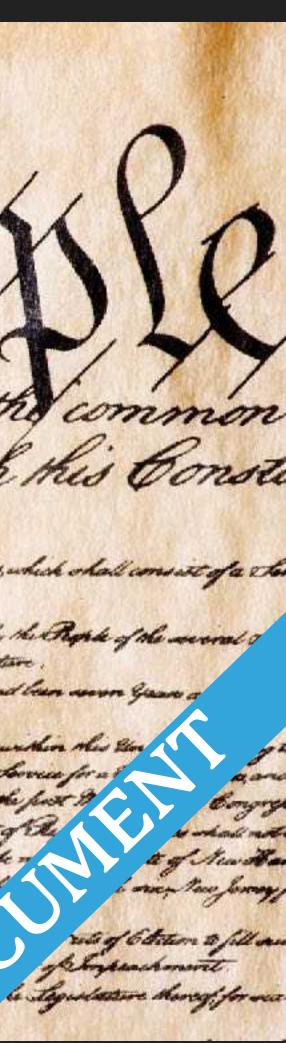
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AMENDING THE CONSTITUTION

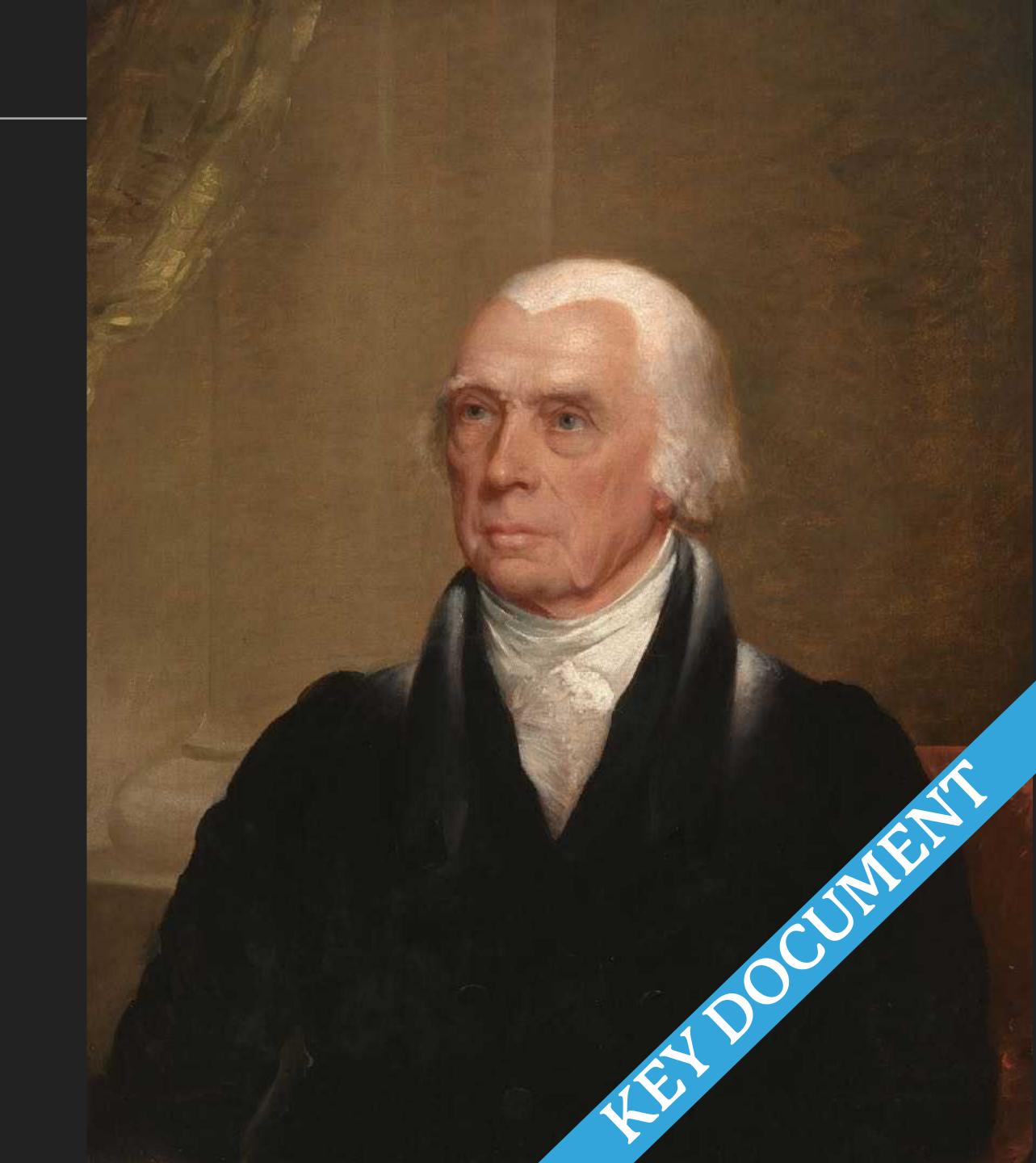
- 27 Amendments have passed of the 12,000 proposed.
- 2/3 of both houses of Congress and 3/4 of the states must ratify an amendment.
- Or a constitutional convention could take place.
- The first set of amendments was the **Bill of Rights**, but we'll get into those later.

insure domestic Tranquility provide for the common and our Postenty, al ordain and establish this Conste Fertion 1. All legestation Ponen homen granted shed to institution a bengrap of the Emited States, which shall consist of a the Representation Section ? The Haye of Ayrountation whell be compared of Member chain way wood querty the Rept of the second of mand that had have lucy protions requests for blacks of the mail numerow Beanch of the state Lyndation . Nor Born shall be a Representative who shall not have attained to the age of ternty for Geor, and been surn Geor a and who shall not when elected, be an Intraditions of that the in which he what he down. Representatives and direct Town what to apportioned among the second states which may be included within this Sin tunder, which shall be determined by adding & the whole Number of free theory, including there bound to above for all not touch, how fight of all other Thouses . The school Commontation shall be made when there goes after the first of and within new outry unt cherry of the good in much Manner as shy shall by Low direct . The Number of the Kirly Thousand but auch Thate shall have at least one Agbravortative, and until much coursentition shall be of intelled to chave how Magheshurts ught third Inland and Rondona Montestins my Connecticity aght Selaurer one, Rayland me Progenes low, tork Barrene for South Carbone per, and Geor Then councies happen in the Representation from any that the Country Menory Monor The House of Resumstatives shall done the sheater and the Bions, and about how the Filtion 3 The thrate of the united tates when the compand of an charter from work attact Inator shall have one lote.



FEDERALIST 10

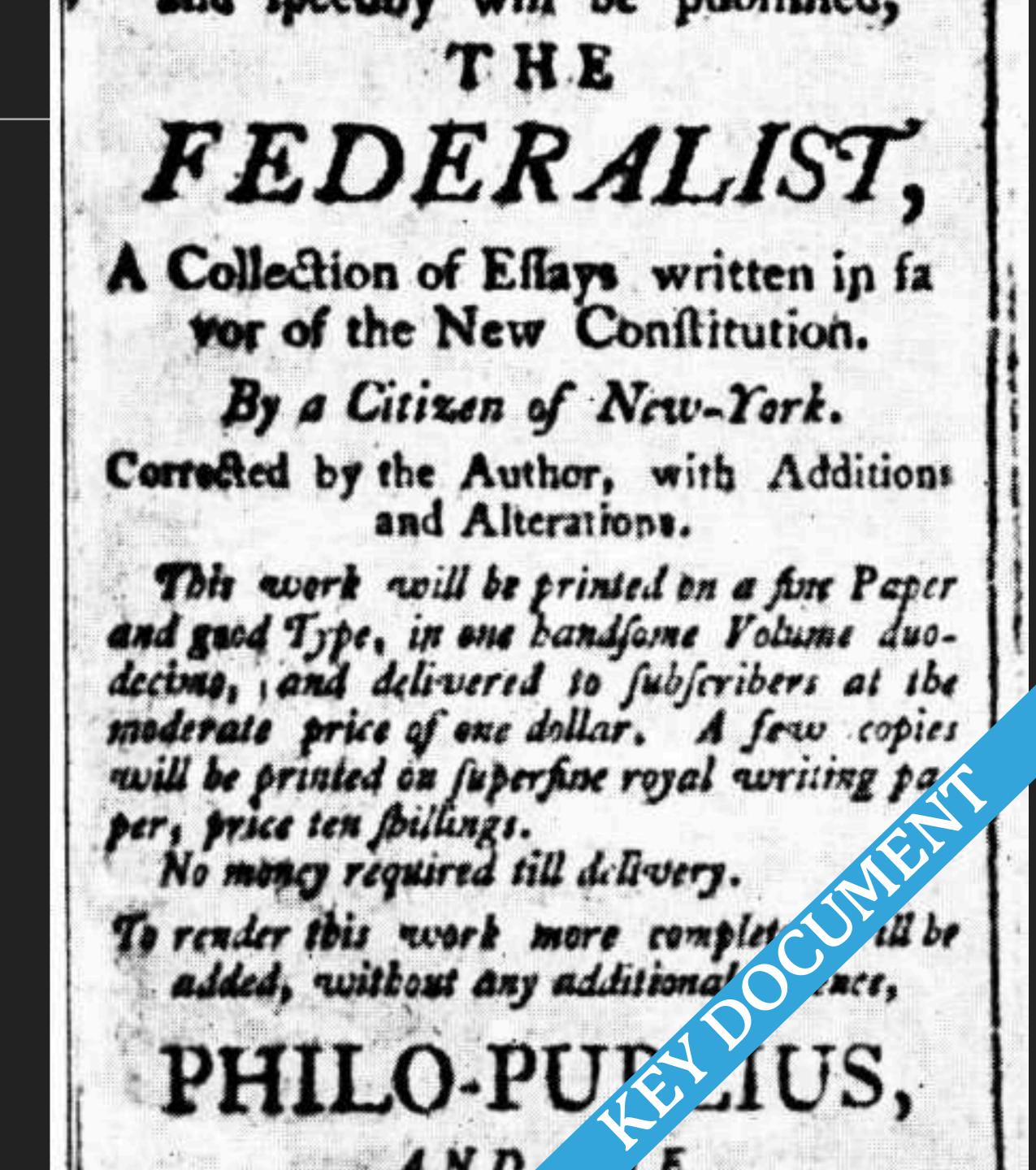
- In Federalist 10, Madison argues:
 - That factions are the greatest threat to democratic government.
 - That the factions come from human nature.
 - We cannot restrain liberty, even though it inspires factions.
 - A large republic will restrain the influence of factions because the government will have many opinions.
 - Pure democracy cannot work, but republics can.



FEDERALIST 51

In Federalist 51, Madison argues:

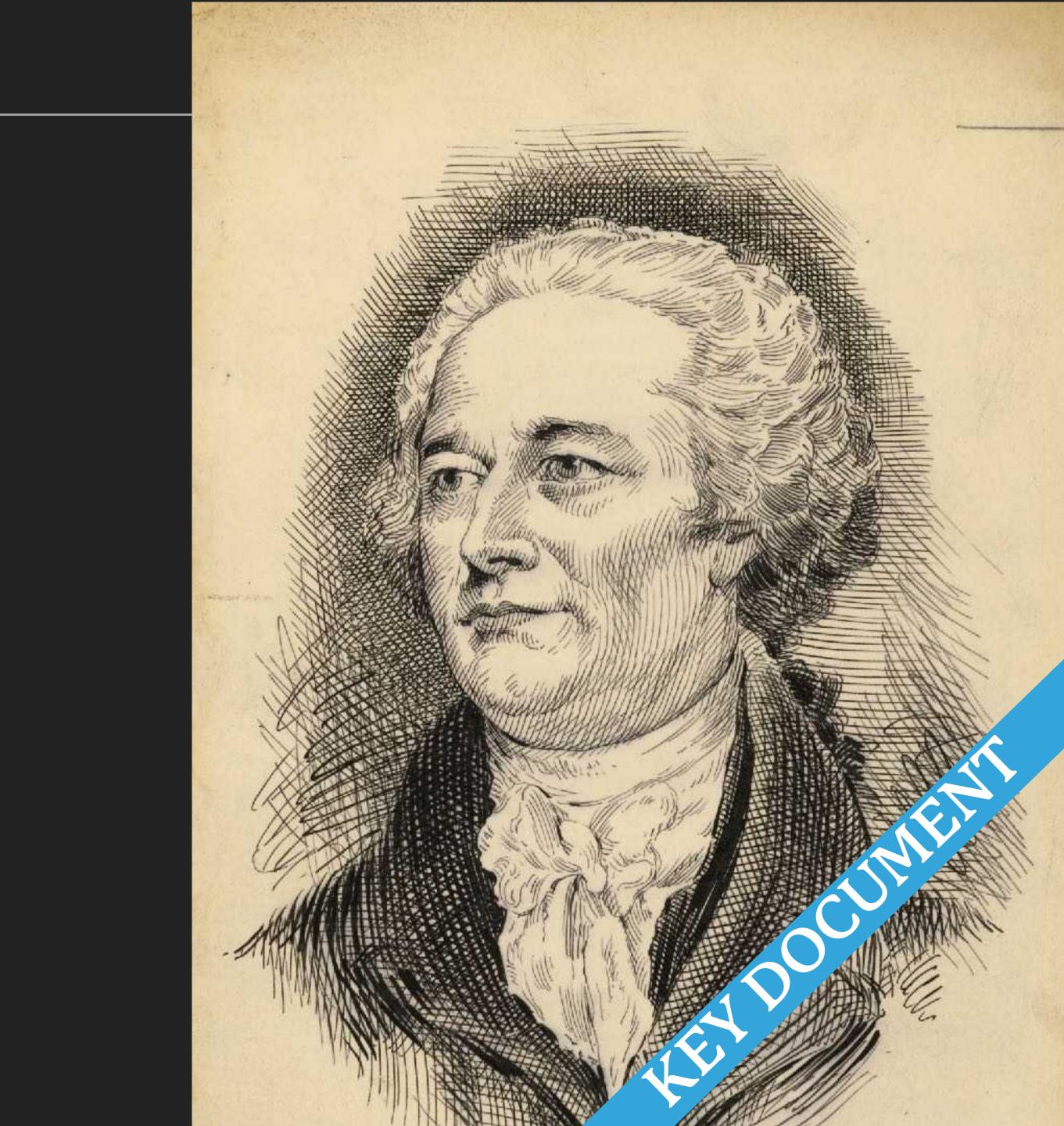
- That checks and balances will prevent abuse by the government.
- Republican government can restrain the worst impulses of factions.
- Republican government can protect people and their rights from the tyranny of the majority.
 - Rights, the Founders believed, should not be subject to popular vote. Well, for some people.



FEDERALIST 70

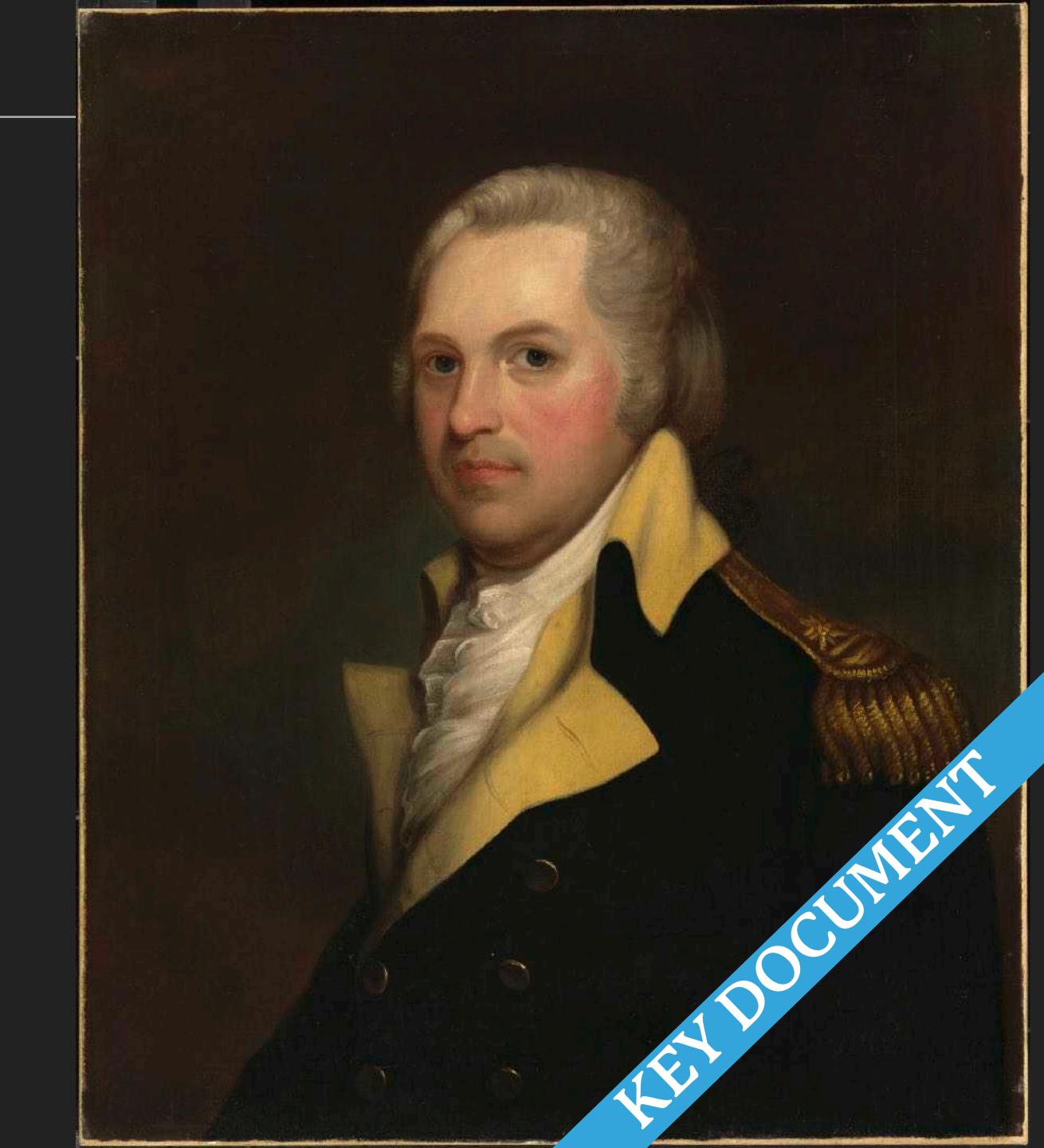
In Federalist 70, Hamilton argued that:

- The US needed a strong, executive (President) to protect the country.
- A strong executive would be able to act swiftly, unlike a slow-moving Congress.
- Three key characteristics for Hamilton:
 - Unity of action
 - Duration of term (stability)
 - Competent powers



BRUTUS I

- Brutus I was one of the most influential Anti-Federalist documents, published right after the Convention. It argued:
- That a republic could only work in a small, cohesive society
- The demands of a large nation would compel the federal government to trample liberty. Rome and Greece were proof.
- A confederation of small republics would better serve liberty.
- Bill of Rights was needed.
- Too much power in the hands of the federal government (Elastic Clause)



BILL OF RIGHTS

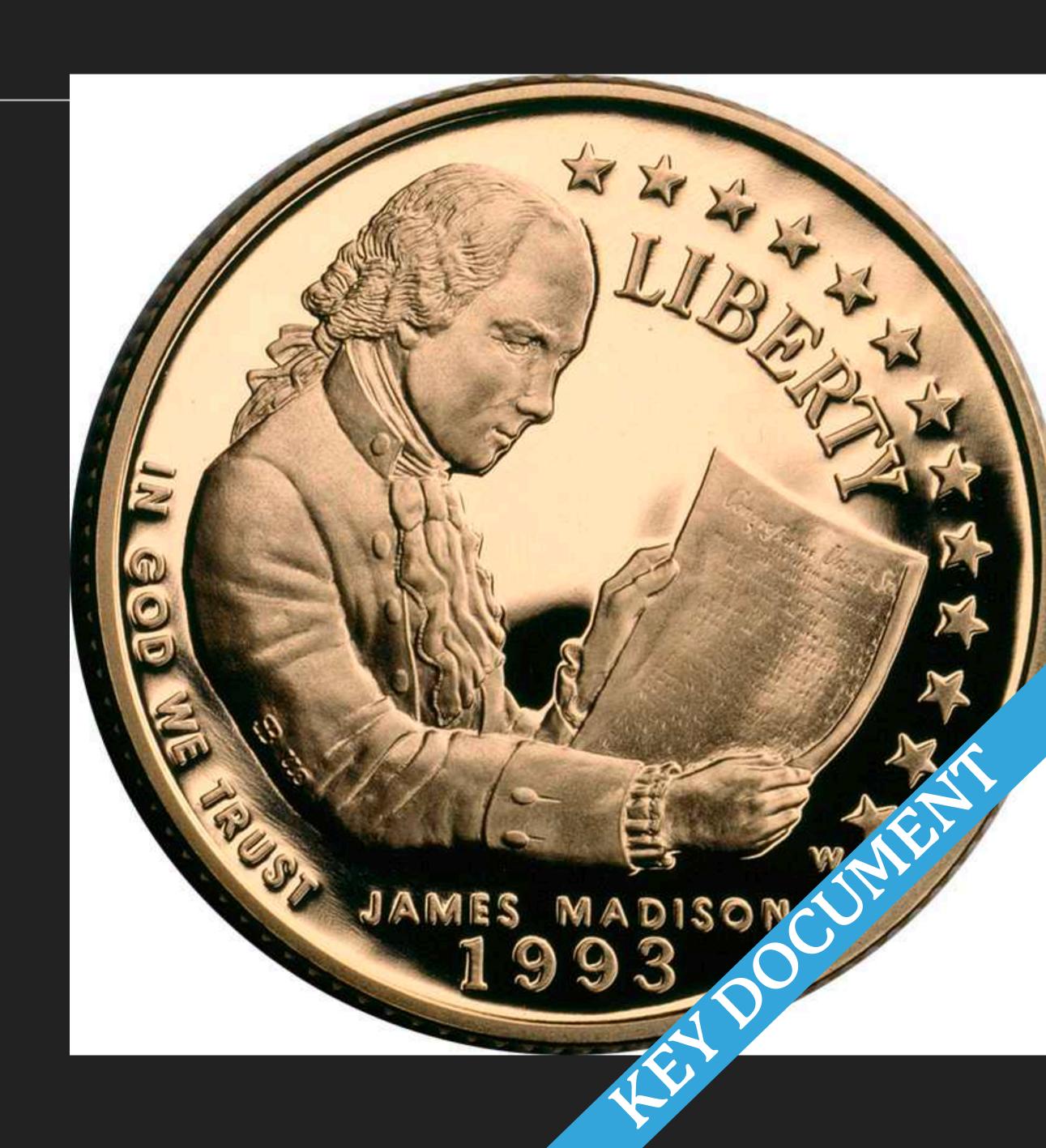
- One of the major concerns of the Antifederalists was that the Constitution did not protect civil liberties.
- 1st: Freedom of religion, speech, press, assembly, petition
- 2nd: right to bear arms
- **3rd**: no quartering troops
- 4th: unreasonable search and seizure, probable cause, warrants
- 5th: Grand jury, no double jeopardy, no self-incrimination

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BILL OF RIGHTS

- 6th: right to an impartial jury, speedy trial, to confront witnesses, an attorney
- 7th: trial by jury in most cases
- 8th: prohibits excessive bail and "cruel and unusual punishment:
- 9th: The people are not denied rights not specifically mentioned in the Constitution
- IOth: Powers not granted to the federal government nor denied to the states are given to the states.



LETTER FROM A BIRMINGHAM JAIL

- While in jail for violating an Alabama law against public protest, Martin Luther King Jr. wrote the Letter from a Birmingham Jail.
- As it relates to AP Government, the Letter:
 - illustrates the critical role of social
 movements to advocate for civil rights
 progress.
 - articulates a defense of civil
 disobedience to break unjust laws.
 - argues that the arc of history will move towards justice, but only if people of good will act.

