

A person wearing a cowboy hat is seen from behind, holding a large American flag that is waving in the wind. The scene is set against a bright, hazy sunset or sunrise sky. The overall tone is patriotic and celebratory.

LANDMARK CASES & FOUNDATIONAL DOCUMENTS

---

# AP Government Review



# Landmark Cases

# 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.



## MCCULLOCH V. 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**.



## 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.



## 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.



## 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.





## 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.



## 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.



## 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.



## 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.



## ROE V. 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.



## 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.



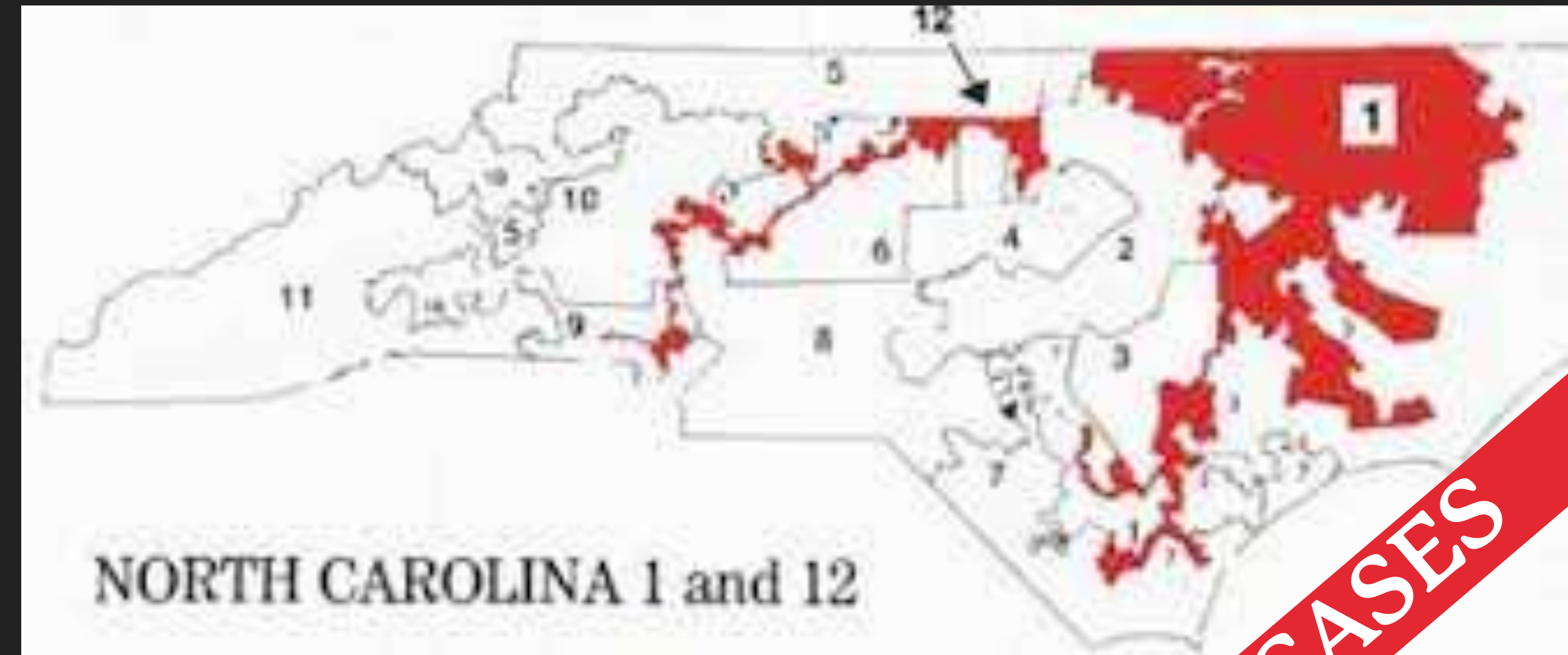
## BAKER V. CARR

- ▶ 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.



## 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.

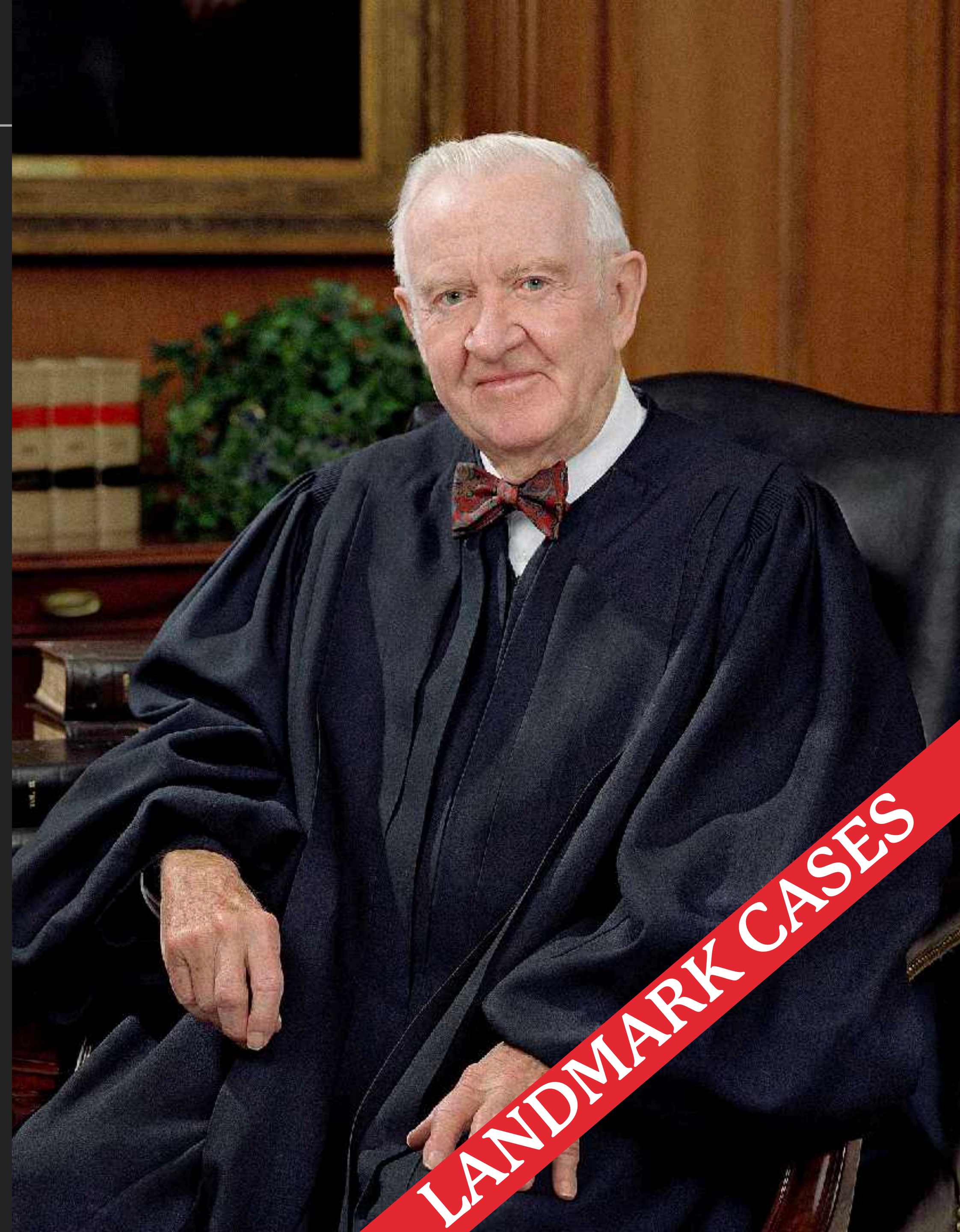


LANDMARK CASES



## 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.



LANDMARK CASES

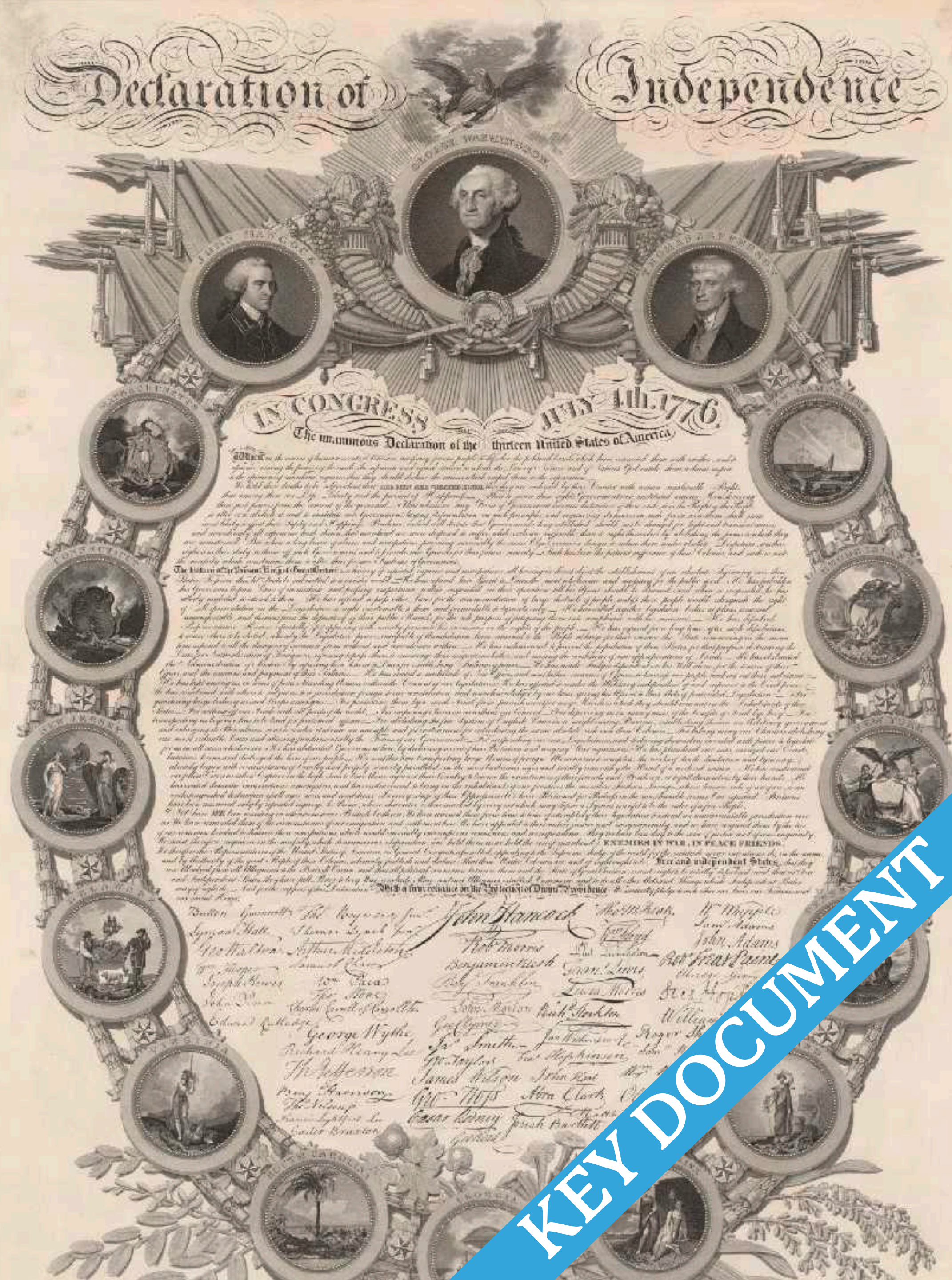


---

# Foundational Documents

# THE DECLARATION OF INDEPENDENCE

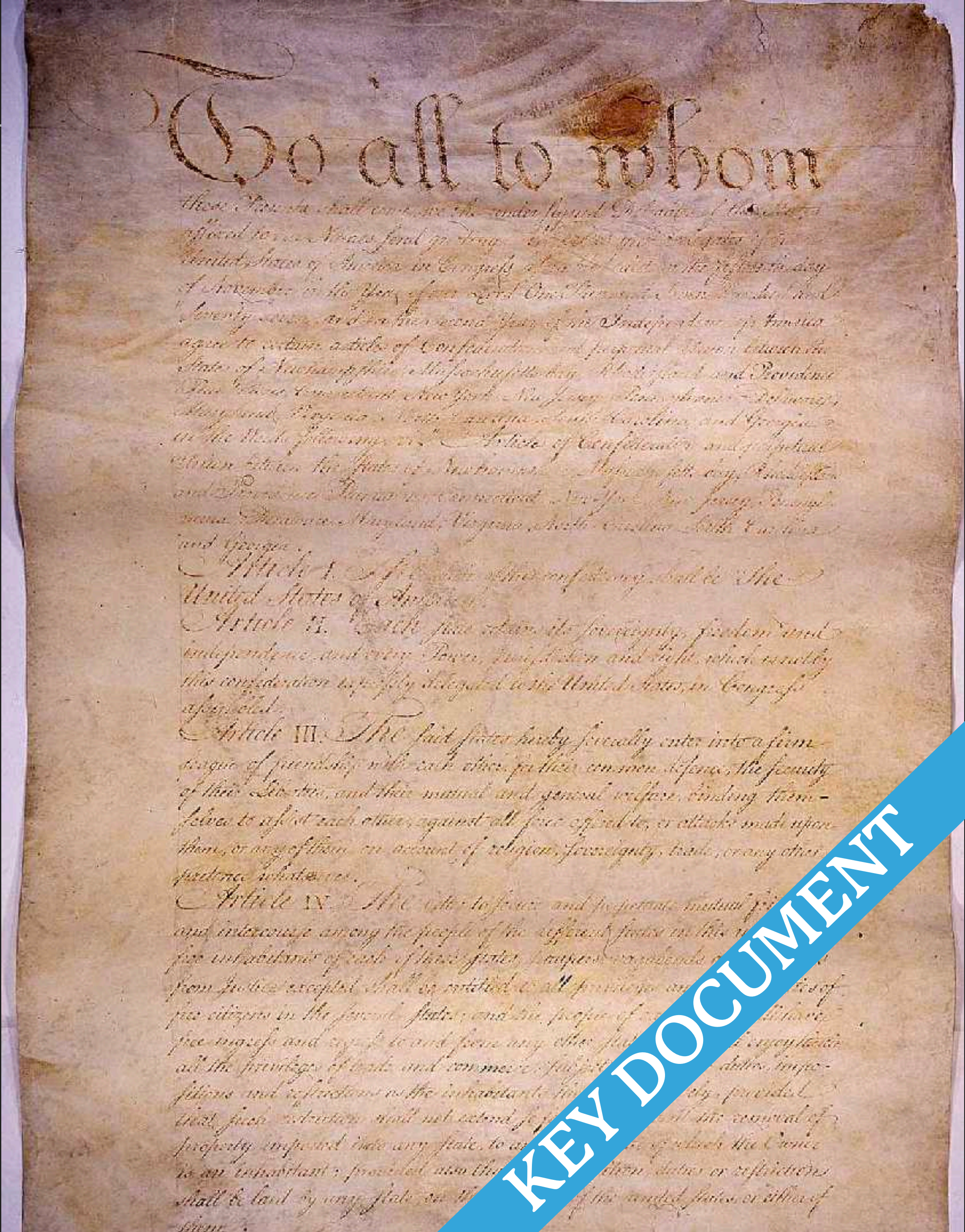
- ▶ **Thomas Jefferson** was the chief writer of the **Declaration of Independence**, which
- ▶ Identified the violations of liberty by King George III as **justifications for rebellion**.
- ▶ Established the argument that certain rights are **unalienable**.
- ▶ Asserted the **legitimacy and act of independence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



KEY DOCUMENT

# 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



KEY DOCUMENT

# 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.



## 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.



## AMENDING THE CONSTITUTION

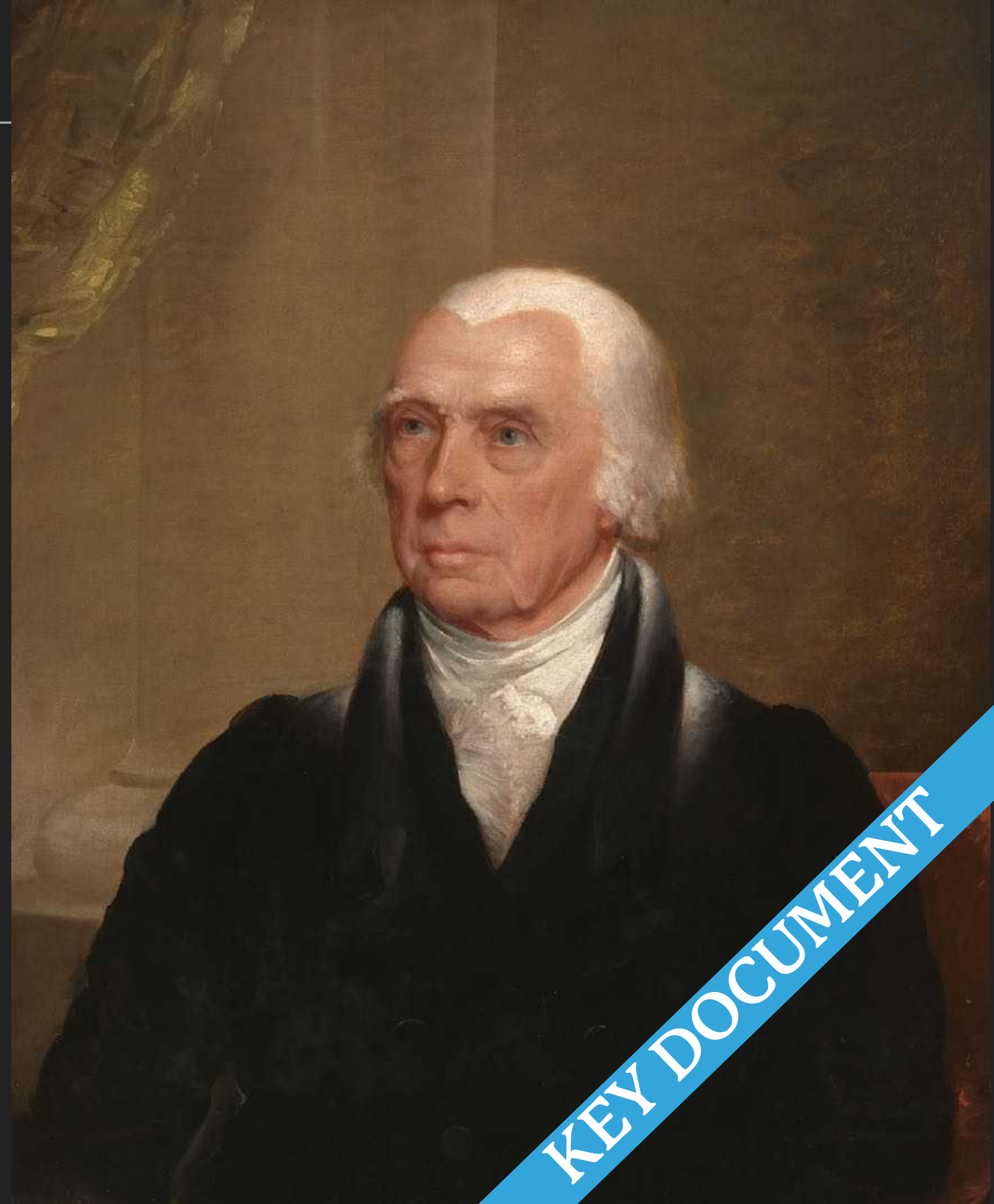
- ▶ **27 Amendments** have passed of the 12,000 proposed.
- ▶ **2/3** of both houses of Congress and **3/4** of the states must ratify an amendment.
- ▶ Or a **constitutional convention** could take place.
- ▶ The first set of amendments was the **Bill of Rights**, but we'll get into those later.





## 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.



KEY DOCUMENT

## 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.

THE  
**FEDERALIST,**

A Collection of Essays written in favor of the New Constitution.

*By a Citizen of New-York.*

Corrected by the Author, with Additions and Alterations.

*This work will be printed on a fine Paper and good Type, in one handsome Volume duodecimo, and delivered to subscribers at the moderate price of one dollar. A few copies will be printed on superfine royal writing paper, price ten shillings.*

*No money required till delivery.*

*To render this work more complete, shall be added, without any additional charge,*

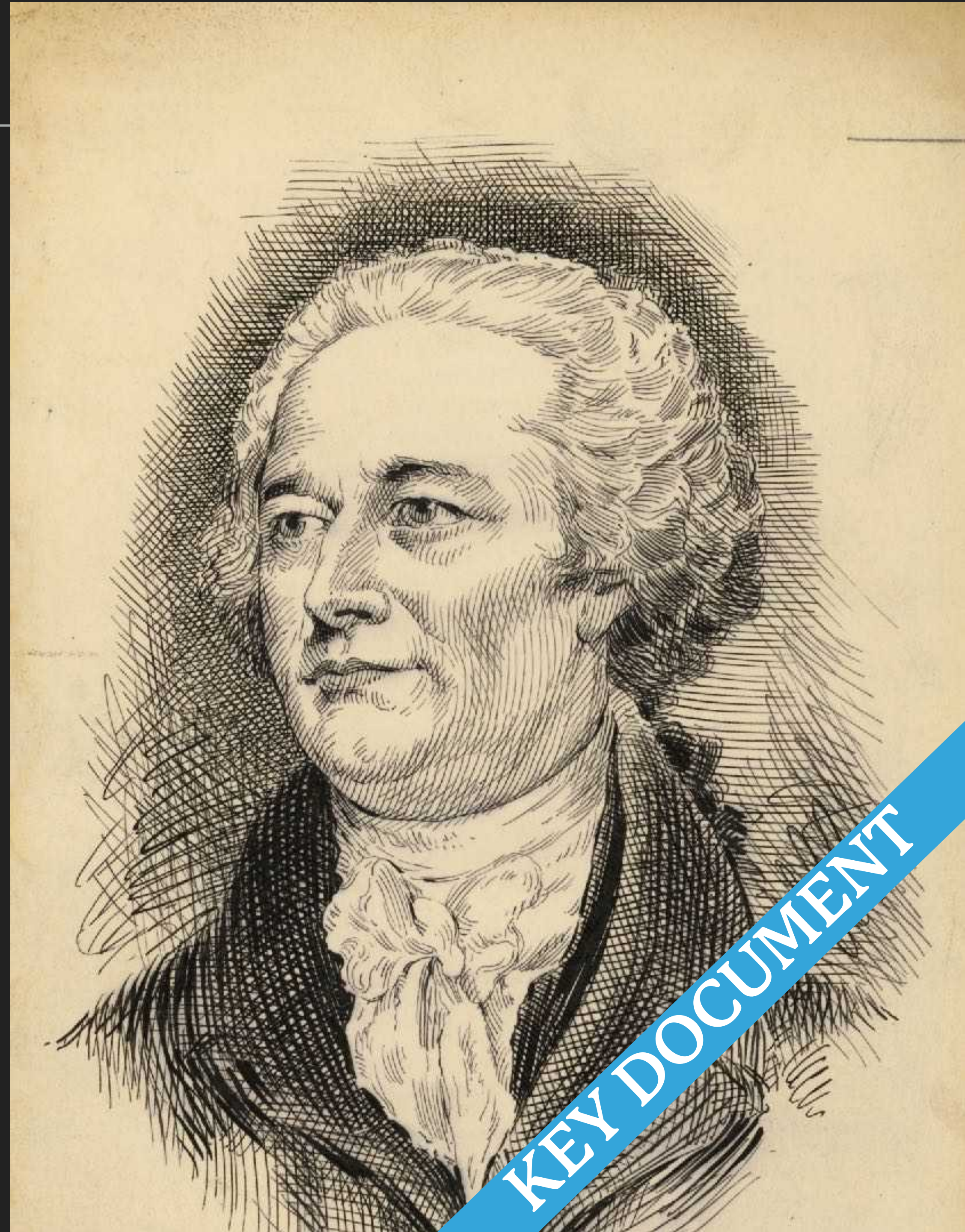
**PHILO-PUBLIUS,**

AND

KEY DOCUMENT

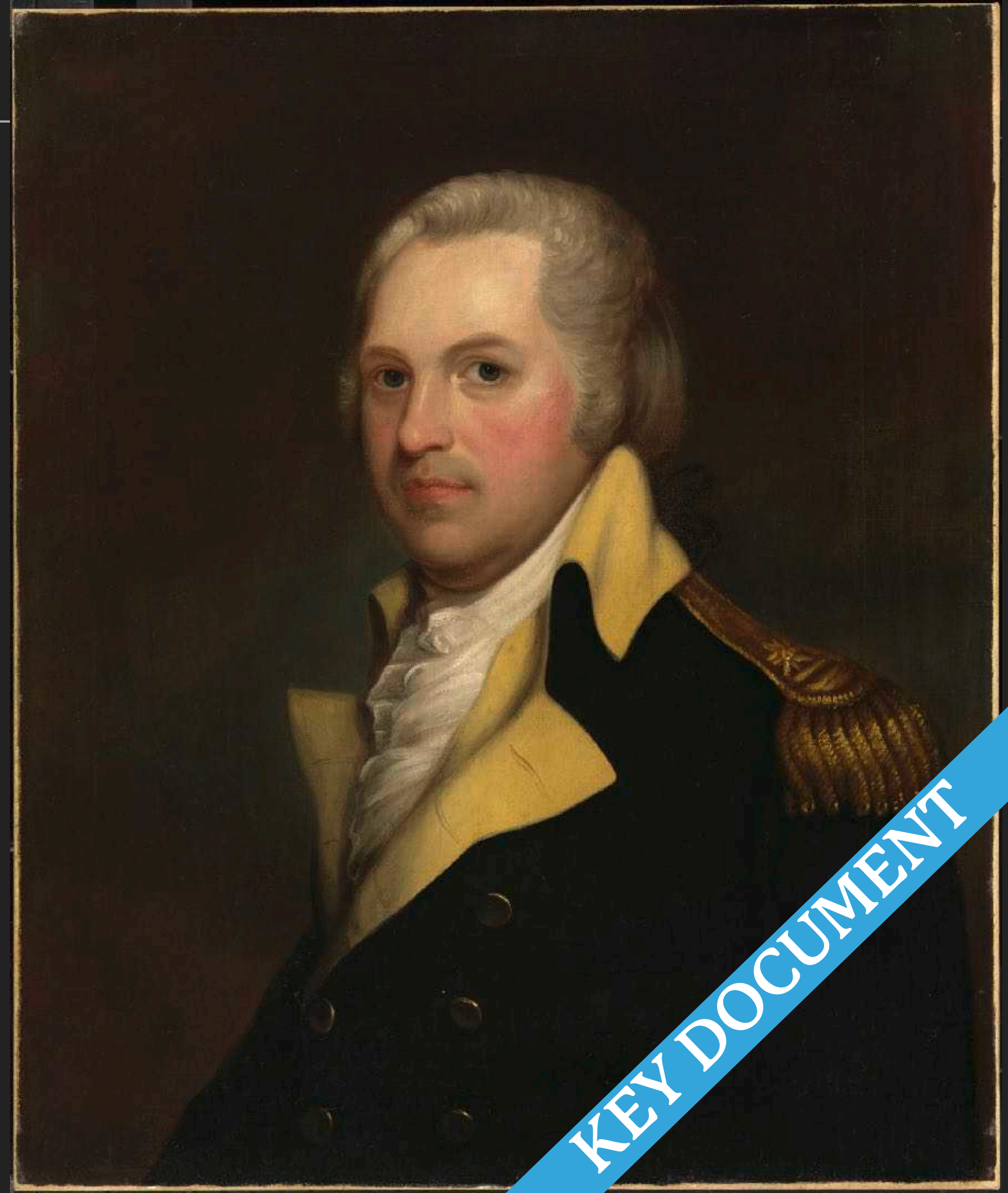
## FEDERALIST 70

- ▶ 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**



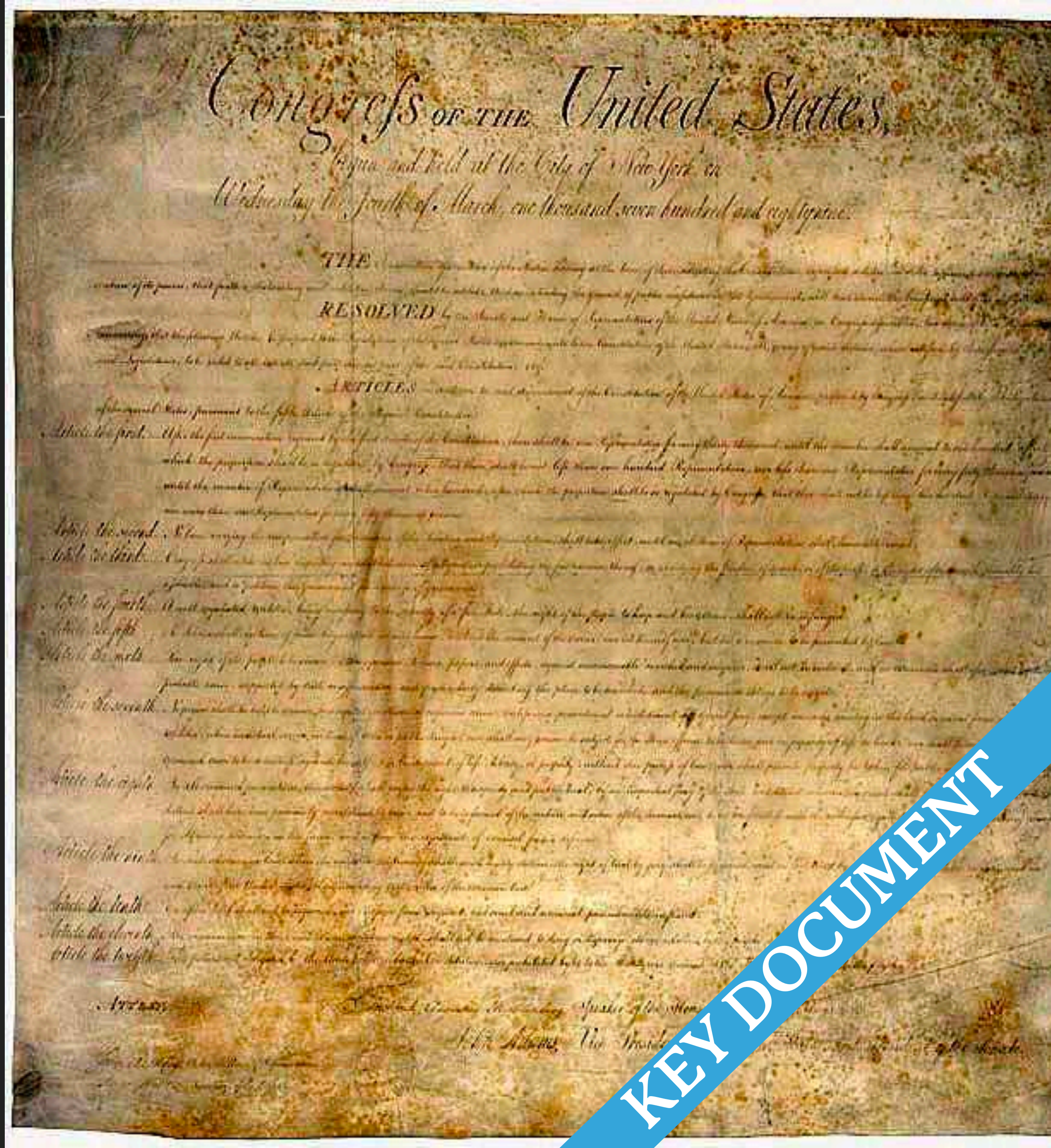
### BRUTUS I

- ▶ 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)



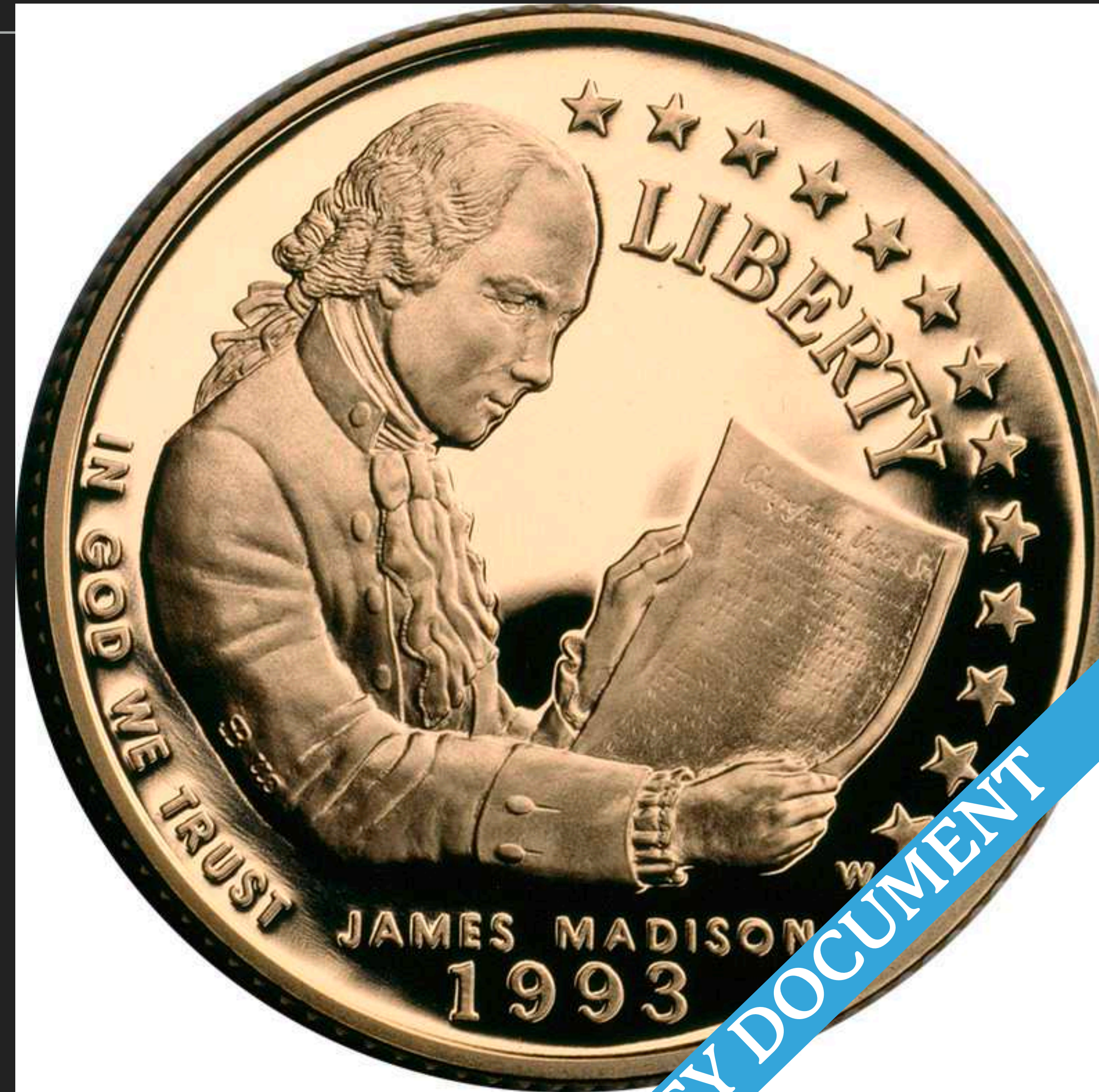
# BILL OF RIGHTS

- ▶ 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



## 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
- ▶ **10th**: 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.



"FREEDOM IS NEVER VOLUNTARILY GIVEN BY THE OPPRESSOR. IT MUST BE DEMANDED BY THE OPPRESSED" - MARTIN LUTHER KING JR.

KEY DOCUMENT