



CIVIL LIBERTIES & CIVIL RIGHTS

---

# Unit 3: AP Test Review

# Test Format for AP American Government Test 2022

## Section 1: Multiple Choice Questions

55 multiple choice questions over 80 minutes, covering analysis and knowledge of core concepts. This is 50% of the test grade.



## Section 2: Argument Essay

A 40 minute long essay that will advance a complex, nuanced argument using reference to foundational documents. It is 12.5% of your grade.



## Section 2: Short Answer

Three short answer questions (Concept Application, Quantitative Analysis, and SCOTUS Comparison). Each is worth 12.5 % of your grade and should take 20 minutes.



13-18%

**HOW MUCH OF THE TEST WILL COME FROM UNIT 3?  
BUT THIS NUMBER IS MISLEADING.**

# LAST MONTH REVIEW STRATEGY

## BIG ARGUMENTS

Make sure you can articulate answers, develop thesis statements, and contextualize these big arguments.

## KEY POINTS

Review these key points, narrowed down from our notes throughout the year. Pay particular attention to bolded terms.

## CONTEXT

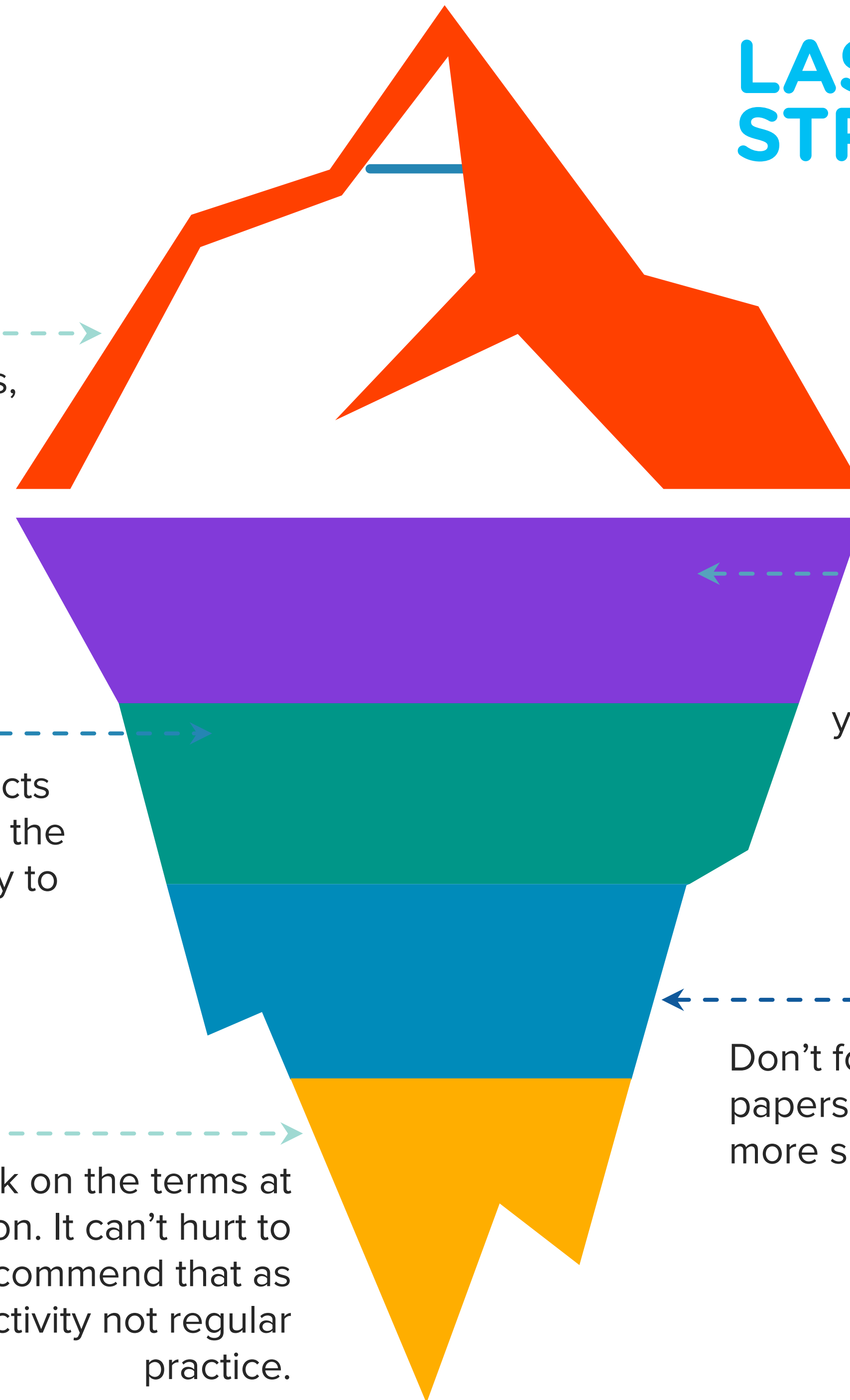
Think about how each unit connects to others. For instance, how does the compromise that denied humanity to slaves connect to the Civil Rights Movement?

## TEST PREP

Don't forget to review rubrics, sample papers, multiple choice questions and more specific test prep!

## TERMS

Your lowest priority is to work on the terms at the end of the presentation. It can't hurt to review those, but I would recommend that as a quick, periodic Quizlet activity not regular practice.



# THE BIG ARGUMENTS

**MAJOR THEMES AND CONCEPTS**

# THE BIG ARGUMENTS

- ✓ The Bill of Rights and the 14th Amendment are continually being reinterpreted to balance protection of individual rights and the power of government.
- ✓ The 14th Amendment's due process clause has been used to selectively incorporate provisions of the Bill of Rights to the states and that due process clause is the mechanism for enforcing many rights.
- ✓ The 14th Amendment's equal protection clause has been used to support the idea of equality.
- ✓ Public policy protecting civil rights has been a long process of state interactions and constitutional interpretation. Social movements like the Civil Rights Movement and the Suffragist movement have been critical.
- ✓ Over time, the Court protects the rights of majority and minority groups. The make up of the court and society shape these changes.
- ✓ Civil liberties are the natural rights in the Constitution, while civil rights are those that protect people from discrimination.

# KEY POINTS

**KEY POINTS WORTH LOCKING AWAY IN THE BRAIN**



# The First Amendment



## THE FIRST AMENDMENT

---

### FIVE FUNDAMENTAL FREEDOMS OF THE 1ST

- ▶ Unless you want to be confirmed as a Supreme Court justice, you **must know** the **five fundamental freedoms of the First**.
- ▶ **The First Amendment** says that **Congress** may not:
  - ▶ **Establish a religion or stop exercise of religion**
  - ▶ **Abridge the freedom of speech**
  - ▶ **Abridge the freedom of the press**
  - ▶ **Block assembly**
  - ▶ **Block petitioning the government**

**This is a key point**



# LIMITS ON THE 1ST

- ▶ There are limits on free speech:
  - ▶ Restricting **obscenity**
  - ▶ Jeopardizing national security
  - ▶ Restricting false advertising/health claims
  - ▶ Restricting **defamation**
    - ▶ **Libel**
    - ▶ **Slander**
- ▶ From the beginning of the country, **sedition** was weaponized to silence political opponents.



## PRIOR RESTRAINT

- ▶ One key legal concept in free speech law is that **prior restraint**—punishing or forbidding communication before it is presented—is not permitted.
- ▶ The most important case before the Court was the **Pentagon Papers** case, when the federal government tried to stop the New York Times from publishing top secret information about the Vietnam War.
- ▶ Publishers can still face criminal or civil penalties for publication.



## 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 (1917)

- ▶ In **Schenck v. United States**, 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

# SYMBOLIC SPEECH

- ▶ **Symbolic Speech:** expression by conduct, as opposed to words. Examples: picketing, wearing certain symbols, etc.
- ▶ Definitely don't need to remember the names of these cases, but the ideas are important:
  - ▶ **Texas v. Johnson (1989)** By a 5-4 decision, the Court ruled that burning a US flag was protected speech.
  - ▶ **U.S. v. O'Brien (1971):** A 7-1 court decided that it was not a violation of the First Amendment to criminalize burning a draft card.



# FIRST AMENDMENT

---

## FREEDOM OF RELIGION

- ▶ Two key components to the First Amendment on religion:
  - ▶ The **Establishment Clause** prohibits the creation of/promotion of a state religion.
    - ▶ It protects the right to **exercise the religious beliefs and practices** of our choice.
  - ▶ The **Free Exercise Clause**: the government cannot unreasonably restrain the practice of religion.
- ▶ The **Lemon test** is how courts evaluate. The laws must: (1) have a secular purpose, (2) have a principal or primary effect that does not advance or inhibit religion, and (3) not foster an excessive government entanglement with religion.

10/10, remember this.

**NO LAW  
RESPECTING AN  
ESTABLISHMENT  
OF RELIGION, OR  
PROHIBITING THE  
FREE EXERCISE  
THEREOF**



## 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.





# Balancing Rights & Safety

## BIG IDEAS!

- ▶ The Bill of Rights originally only applied to the states.
- ▶ The **Fourteenth Amendment** began to change this. It says no state can “deprive any person of life, liberty, or property, without **due process of law.**”
  - ▶ **Substantive Due process** asks whether the laws themselves are fair/constitutional.
  - ▶ **Procedural due process** asks whether enforcement of the law meets these standards.
- ▶ This began the process of **selective incorporation**, in which limits on federal government are applied to state and local governments.
- ▶ When rights and state/societal interests are in conflict, courts apply a **balancing test.**

THE UNCONSTITUTIONALITY  
OF THE  
14th AMENDMENT

AND THE EVILS RESULTING FROM  
SUBVERSIVE USE OF ITS  
“EQUAL PROTECTION” CLAUSE

**YIKES**

## THE SECOND AMENDMENT

- ▶ The core dispute at the heart of the **Second Amendment** is whether it was intended to be a **collective right** of a militia to resist federal power or an **individual right**.
- ▶ In 1939, the Court ruled 9-0 that it was a collective right.
- ▶ In 2008 and 2010, the Court ruled it was a “fundamental” individual right to bear arms.
- ▶ Today, the fight is over background checks, assault weapons, and gun show sales.



## 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.



## THE FOURTH AMENDMENT

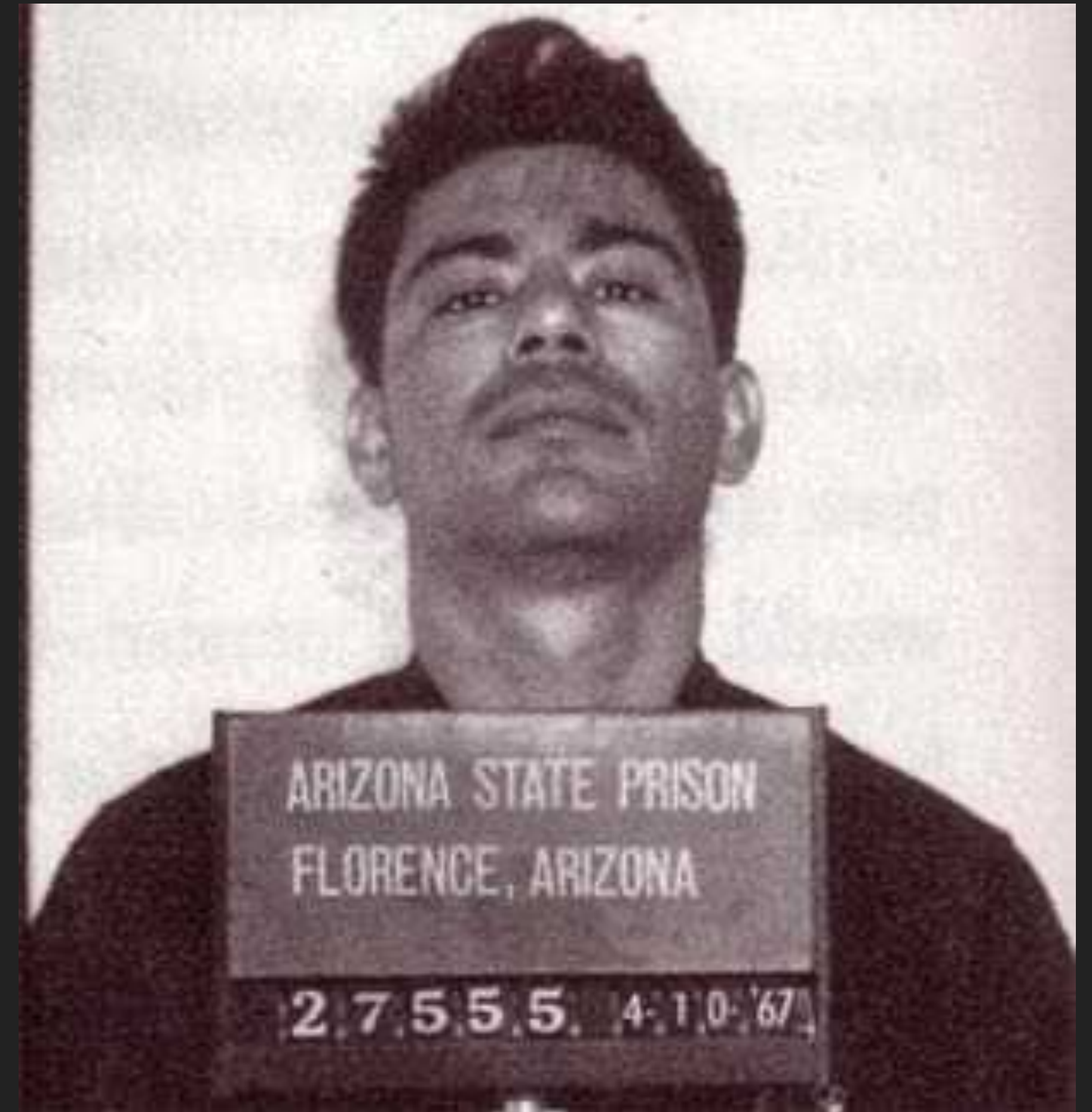
- ▶ The **Fourth Amendment** protects people from “**unreasonable searches and seizures**,” demands the production of **warrants** based on **probable cause**, and demands **specificity** from law enforcement officers searching.
- ▶ **Mapp v. Ohio (1961)** applied the 4th to the states and applied the **exclusionary rule**—the idea that illegally obtained evidence could not be used in court—to the states.
  - ▶ Doctrines like the inevitable discovery and good faith exception have diminished the power of the exclusionary rule.



**DOLLREE MAPP**

## THE FIFTH AMENDMENT

- ▶ A **grand jury** must bring charges (a true bill) in all federal felony cases.
- ▶ One may not lose life, liberty or property without **due process of law**.
- ▶ One may not face **double jeopardy** for the same alleged crime.
- ▶ One may not be forced to incriminate oneself.
  - ▶ **Right to remain silent**
- ▶ The government must provide **just compensation** when it seizes private property.

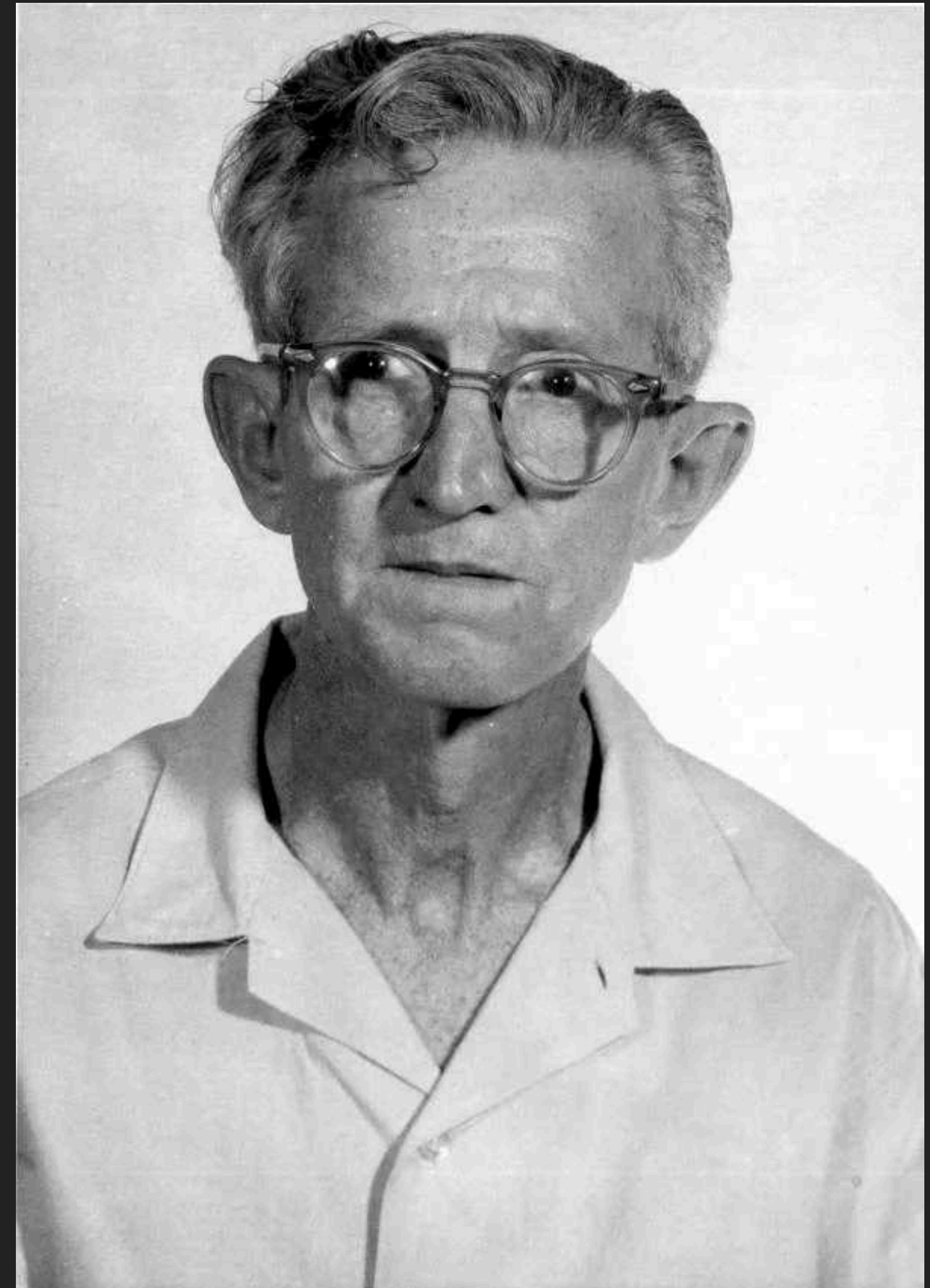


**ERNESTO MIRANDA**



## THE SIXTH AMENDMENT

- ▶ **The Sixth Amendment guarantees:**
  - ▶ **A speedy and public trial**
  - ▶ **An impartial jury of one's peers**
  - ▶ **Witnesses must be presented in court**
  - ▶ **The right to an attorney**



**CLARENCE GIDEON**

## 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.



## THE EIGHTH AMENDMENT

- ▶ **The Eighth Amendment says:**
  - ▶ **Excessive bail may not be required**
  - ▶ **Cruel and unusual punishment may not be inflicted.**
- ▶ **Most of the debate over the 8th centers over the application of the death penalty, which was briefly stricken down by the court in the 1970s.**

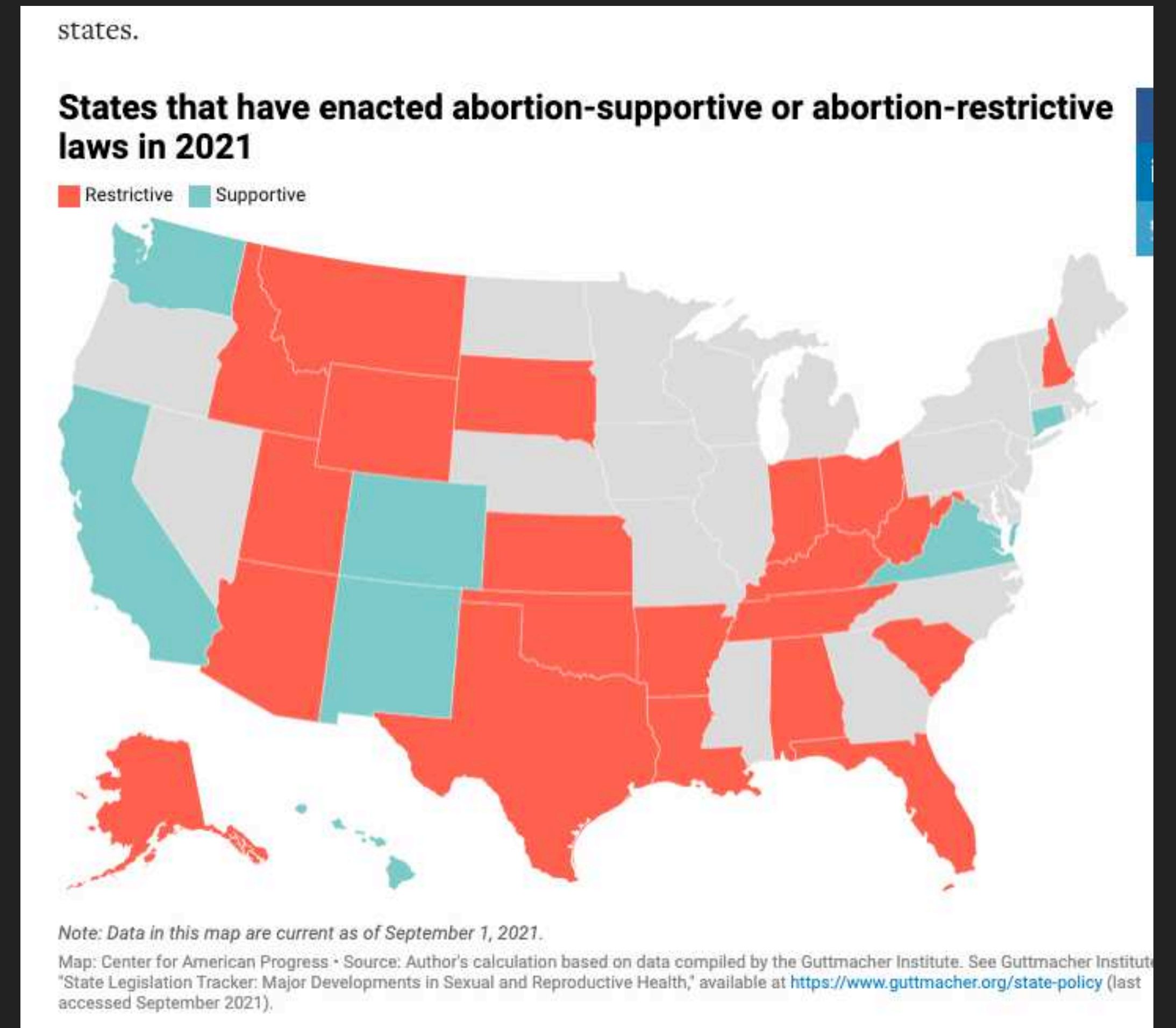




**Abortion**

## ABORTION RIGHTS

- ▶ The founders did not include a **right to privacy** in the Constitution.
- ▶ In 1965, the Court ruled that states could not restrict birth control to married couples, arguing that a **right to privacy** existed in the **penumbras** of the 1st, 3rd, 4th, and 9th Amendments.
- ▶ *Roe v. Wade* (more detailed coming!) established the right to an abortion w/ a trimester system. It has been since replaced with a **fetal viability standard**.
- ▶ Abortion rights are under attack all over the U.S. in 2022.



# 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.





# Civil Rights

# CIVIL LIBERTIES VS. CIVIL RIGHTS

- ▶ **Civil liberties** concern the actual basic freedoms; civil rights concern the treatment of an individual regarding certain rights.
  - ▶ **Civil liberties** are the articulation of the natural rights enjoyed by all and articulated in the Bill of Rights.
  - ▶ **Civil rights** concern efforts to ensure that those liberties are applied equally and that people don't face **discrimination** from **unequal treatment**.
- ▶ Enforcement of civil rights most often rests on the **Equal Protection Clause of the 14th Amendment**.

**No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**



# DISCRIMINATION AND THE LAW: SCRUTINY

- ▶ Some forms of discrimination are permitted by the law. Courts use the **rational basis test** to determine whether the discrimination is permissible.
- ▶ **Intermediate scrutiny** means the government must only show an **important interest**.
- ▶ The **strict scrutiny test** applies
  - ▶ when the discrimination is targeted at a race, religion, immigration status
  - ▶ Or denies a fundamental right.
  - ▶ The government must show **compelling state interest**.

Age, disability, gender, sexual orientation

Some gender-based cases

Race, ethnicity, immigration status or restriction of fundamental civil right

# KEY CONSTITUTIONAL AMENDMENTS

- ▶ The **13th Amendment** abolished slavery or involuntary servitude except as a punishment for a crime.
  - ▶ Mass incarceration
- ▶ **The 14th Amendment**
  - ▶ made former slaves and all people born in the United States citizens
  - ▶ Guaranteed due process of law for all
- ▶ **The 15th Amendment** made it illegal to use race as a reason to block voting rights.
- ▶ **The 19th Amendment** gave women the right to vote.
- ▶ **The 24th Amendment** outlawed poll taxes.



## CIVIL RIGHTS

# CIVIL RIGHTS FOR AFRICAN AMERICANS

### ▶ The Civil Rights Act of 1964

- ▶ protection of voting rights for all Americans
- ▶ opening of public facilities (restaurants, hotels, stores, restrooms) to people of all races
- ▶ a commission to protect equal job opportunities for all Americans.

### ▶ The Voting Rights Act of 1965

- ▶ Put an end to literacy tests
  - ▶ Authorized federal examiners to register voters in areas suspected of denying Black Americans the right to vote
  - ▶ Directed the attorney general to take legal action against states that continued to use poll taxes in state elections
- ▶ Important note: while **de jure** segregation is forbidden by law in the United States, **de facto** segregation endures.



## 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.



## 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

# ADVANCES IN CIVIL RIGHTS

### ▶ Women

- ▶ **Title VII of the Civil Rights Act (1964)** barred job discrimination based on sex.
- ▶ **Title IX of the Education Amendments of 1972** protects people from sex discrimination in educational settings.

### ▶ Disabled People

- ▶ **The Education for All Handicapped Children Act (1975)** guarantees that children with disabilities will receive an “appropriate” education in the “least restrictive environment.”
- ▶ **The Americans with Disabilities Act (1990)** forbids government agencies and owners of public accommodations from discriminating against people with disabilities.

### ▶ LGBTQ+

- ▶ In 2015, **Obergefell v. Hodges** recognized a right to same sex marriage.



# AFFIRMATIVE ACTION

- ▶ One of the most contentious civil rights issues today is **affirmative action**.
- ▶ Proponents argue that affirmative action is a necessary **corrective for the legacy of racism**; opponents argue that it amounts to **reverse discrimination** and we need to live in a **color blind** society.
- ▶ The standard in the United States today is that institutions like schools can use race as a **plus factor** when making admissions decisions, but cannot have **quotas**.

The Supreme Court just (January '22) took two cases arguing that race cannot be a factor in college admissions.



# TERMS

**CAN'T HURT TO KNOW WHAT THESE MEAN**



## KEY TERMS

---

- First Amendment
- Second Amendment
- Fourth Amendment
- Fifth Amendment
- Sixth Amendment
- Eighth Amendment
- Ninth Amendment
- Thirteenth Amendment
- Nineteenth Amendment
- Twenty-Fourth Amendment
- Free exercise clause
- Lemon Test
- Strict Scutiny
- Free Expression
- Prior Restraint
- Clear and Present Danger
- Fighting words
- Obscenity
- Libel
- Slander
- Five Fundamental Freedoms of the First
- Ex Post Facto Laws
- Due Process Clause
- Equal Protection Clause
- Civil liberties
- Civil Rights
- Establismnt Clause
- Free Exercise Clause
- Good Faith Exception
- Affirmative Action
- Right to Privacy
- Bill of Rights
- Black Codes
- Poll Taxes
- Separate but equal
- Desegregation
- De jure segregation
- De Facto Segregation
- Civil Rights Movement
- Boycott
- Civil Disobedience
- Civil Rights Act
- Voting Rights Act
- Double Jeopardy
- Selective Incorporation
- Miranda rights
- Substantive Due Process
- Write of Habeas Corpus
- Symbolic Speech
- Capital punishment
- Eminent Domain
- Sedition Acts
- Separation of Church and State
- Defense of Marriage Act
- Jim Crow
- Grandfather Clause
- Suffrage Movement
- Strict Scrutiny
- Title IX
- Americans with Disabilities Act
- NAACP
- Quotas
- Exclusionary Rule
- Equal Rights Amendment