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**AP U.S. GOVERNMENT AND POLITICS**

**Unit 3- Judicial Branch, Civil Rights and Civil Liberties – Review Packet**

**Interactions Among Branches of Government**

Because power is widely distributed and checks prevent one branch from usurping powers from the others, institutional actors are in the position where they must both compete and cooperate in order to govern. The three key institutions of the federal government are Congress, the presidency, and the courts. The bureaucracy, which implements policy, is seen by some as an extension of the executive branch and by others as, in effect, a fourth branch of government because of the discretion it can exercise in carrying out policy directives. The Constitution grants specific powers to Congress, the president, and the courts, and in addition, each branch exercises informal powers (developed through political practice, tradition, and legislation). Because checks and balances are designed to prevent one branch from becoming too powerful, Congress and the president, for example, will sometimes cooperate and sometimes compete in governance

The federal judiciary, including the Supreme Court, established under Article III, is designed to be an independent branch of government. The Court’s most far-reaching power, judicial review, was justified in Marbury v. Madison (1803), where the Court declared that it had the constitutional authority to overturn acts of Congress, state laws, or executive action deemed to be unconstitutional. Thus, judicial review serves as an important check on other branches of government. Appointed for life, justices are somewhat insulated from public opinion. It is not surprising that over the years the Court has handed down decisions that have been unpopular and controversial. Congress and the president may influence the Court through the appointment process, by refusing to implement a Court decision, or by passing legislation that changes the Court’s jurisdiction.

**Civil Liberties and Civil Rights**

Through the U.S. Constitution, but primarily through the Bill of Rights and the Fourteenth Amendment, citizens and groups have attempted to restrict national and state governments from unduly infringing upon individual rights essential to ordered liberty and from denying equal protection under the law. Likewise, it has sometimes been argued that these legal protections have been used to block reforms and restrict freedoms of others in the name of social order.

The Constitution, but especially the Bill of Rights and the Fourteenth Amendment, are used to assert the rights of citizens and protect groups from discrimination. As such, the government must respect the dignity of the person and assure equal treatment, with its power constrained in the process of protecting individual freedoms. The Fourteenth Amendment includes two clauses that affirm and protect civil rights and liberties—the due process clause and the equal protection clause. The courts must balance the desire for social order with the protection of individual rights and freedoms when considering due process and equal protection challenges.

In a process known as selective incorporation, the Supreme Court has used the power of judicial review to interpret the due process clause in such a way as to prevent states from unduly restricting fundamental freedoms. The Court has been called upon to interpret protections for freedom of political expression and religious exercise, the right to bear arms, the right of privacy, and the rights necessary to ensure that those accused of crimes receive a fair trial.

The equal protection clause provides that states may not deprive persons of equal protection under the law. African Americans, Hispanics, women, LGBTQ (lesbian, gay, bisexual, transgender, queer) people, and other groups have used the clause to lead social movements on behalf of their concerns. The Supreme Court has rendered several landmark decisions that expand civil rights, and Congress has passed legislation that expands equality. At times Congress and the courts are asked to determine the legitimacy of equal protection claims by various groups, as well as weigh the majority’s concerns that they will be harmed by the changes sought.

**Essential Questions:**

* How do the branches of the national government compete and cooperate in order to govern?
* To what extent have changes in the powers of each branch affected how responsive and accountable the national government is in the 21st century?
* To what extent do the U.S. Constitution and its amendments protect against undue government infringement on essential liberties and from invidious discrimination?
* How have U.S. Supreme Court rulings defined civil liberties and civil rights?

**Big Idea #1:** The design of the judicial branch protects the Supreme Court’s independence as a branch of government, and the emergence and use of judicial review remains a powerful judicial practice.

**Checks and Balances and Judicial Review**

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|  | Describe the Main Ideas | Explain the Importance of the Main Ideas |
| Article III of the Constitution | Lays out the structure, functions, and powers of the judicial branch of the United States | Establishes a Supreme Court and a three branch separation of powers |
| Judicial Review | The ability of courts to review legislation and government actions to determine if their intent is supported by the Constitution | Allows for an important check on the Congress and the Presidency |
| Federalist No. 78 | Written by Alexander Hamilton, it outlines how the judicial branch will operate and why it is important that it be structured as laid out in the Constitution | As part of the Federalist Papers it is an important document showing the framers intent for the judicial branch and why it was important to ratify the Constitution |

**Checks and Balances and Judicial Review**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | | **Constitutional principles** |
| *Marbury v Madison* | 1803 | John Adams appoints last minute judges...Thomas Jefferson directs James Madison not to deliver remaining judicial commissions. William Marbury does not receive his judicial commission and takes his case directly to the Supreme Court under the terms of the Judiciary Act of 1789 and demands a “writ of mandamus” which would legally compel his commision to be delivered. | | -Article III  -Judicial Review |
| Explain the importance of judicial review in U.S. government. | | | Explained in the section above | |
| Explain how the exercise of judicial review in conjunction with life tenure of judges can lead to debate about the legitimacy of the Supreme Court’s power. | | | Judicial review and life tenure gives unelected federal judges wide discretion in public policy. The ability to be the final arbitrator on most policy matters is quite powerful. Being unelected and having life terms is questioned by some as being anti-democratic | |

**Judicial decision making: Importance of** precedents and ***stare decisis***

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|  | **Precedents** | ***stare decisis*** | **Landmark Case** |
| Define | An earlier event of action that is regarded as an example or guide to be considered in subsequent similar circumstances | The legal principle determining points in litigation according to precedent | A court case (usually Supreme Court case) that serves as an important benchmark for historical purposes and legal precedent |
| Explain | Stability of law is an important part of American politics...constantly changing laws would lead to inconsistency and would undermine legal institutions | Legalization of abortion is a legal principle that has been in place since the Supreme Court’s decision in *Roe v. Wade* | The Supreme Court issues maybe 75-100 decisions per year, however some decisions end up being more important than others for historical reasons and for establishing legal precedent |
| Provide an example | *Plessy v. Ferguson* was a precedent that was overturned in *Brown v. Board of Education* | *Roe v. Wade* | *Marbury v. Madison* |

**Ideology and SCOTUS**

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| Ideological changes in the composition of the Supreme Court, due to presidential appointments, have led to the Court’s establishing new or rejecting existing precedents.  Describe the consequences of each | Establishment of new precedents: The Warren Court in particular established many new legal precedents as it related to individual liberties due to an increase in the number of liberal justices on the Supreme Court  Rejecting of new precedents: In later years a more conservative Rehnquist and Roberts Court has started to reign back some of those legal precedents established by the Warren Court |
| Controversial or unpopular Supreme Court decisions can lead to challenges of the Court’s legitimacy and power which Congress and the president can address only through future appointments, legislation changing the Court’s jurisdiction, or refusing to implement decisions.  Describe consequences each. | Appointments: Appointments have become much more politically polarized in the last 50 years. While justices are expected to be above the law and apolitical, in recent times decisions have been much more ideological in nature  Legislation: At the state and Congressional level, lawmakers will look to modify or undermine Court decisions by passing legislation that change the Court’s intent  Refusal to implement: Courts do not have any power to implement their decisions. They rely on the executive branch to do so which gives the executive branch discretion over how enthusiastic they can be regarding enforcement and implementation |

**Ideology and SCOTUS**

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|  | **Loose Constructionist** | **Strict Constructionist** |
| Define and Explain | One favoring a liberal construction of the Constitution of the U.S. to give broader powers to the federal government...broad government actions on things like health care which is not mentioned in the Constitution would be an example Loose constructionism looks to what someone thinks was the "intent" of the framers' language and expands and interprets the language extensively to meet current standards of human society today. | Interpreting the Constitution based on a literal and narrow definition of the text without reference to the differences in conditions when the Constitution was written and modern conditions, inventions and societal changes |

**Politics and the Supreme Court’s Power**

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|  | **Judicial Activism** | **Judicial Restraint** |
| Define and Explain | The view that Supreme Court justices (and even other lower-ranking judges) can and should interpret the texts of the Constitution and laws in order to serve the judges' own estimates of the needs of society when the elected branches of the Federal government and/or the various state governments seem to them to be failing to meet those needs. | The view that the Supreme Court (and other courts) should not read their own philosophies or policy preferences into the Constitution and laws and should whenever reasonably possible interpret the law so as to avoid second guessing the policy decisions made by other governmental institutions such as Congress, the President and state governments within their constitutional spheres of authority. Judges should defer to the decisions of the elected "political" branches of the Federal government and of the states in matters of policy making. |

**Checks and Balances: How other branches can limit the Supreme Court’s power.**

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| **Restrictions on Supreme Court** | **Description** | **Example** |
| Constitutional Amendments | Changes made to the Constitution over time | The Supreme Court cannot interpret a law in a manner that would take away freedom of speech |
| Judicial appointments and confirmations | The ability of the Senate through its “advice and consent” power to approve federal judges | Brett Kavanaugh nomination process from October 2018 |
| President evading/ignoring SCOTUS decisions | Presidents can choose how much or little to enforce SCOTUS decisions through their directives to the executive branch | Andrew Jackson attributed quote even though he might not have really said it... “Justice Marshall has made his decision, now let him enforce it.”  Marshall had declared state criminal jurisdiction over Indian territories void |
| States evading/ignoring SCOTUS decisions | States will go to great lengths at times to prevent SCOTUS protected rights from being implemented | Various state bills regarding abortion...fetal heartbeat bill, abortion doctors needing hospital admitting rights etc. |
| Congressional Acts | Laws passed by Congress that can modify Supreme Court decisions | At any time Congress can pass a law that changes or limits the Supreme Court’s jurisdiction over cases. No modern examples as the respect for the institution of the Supreme Court would make this seem as an obvious power play by Congress to nullify the Supreme Court |

**Big Idea #2:** Provisions of the U.S. Constitution’s Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.

**U.S. Constitution: Civil Liberties and Civil Rights**

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|  | **Civil Liberties** | **Civil Rights** |
| Define, describe and explain | Individual freedoms given to citizens as protection against government interference | Protections from unequal treatment by government for possessing certain characteristics such as race, gender, disability, sexual orientation etc. |

**Special Note:**

* The U.S. Constitution includes a Bill of Rights specifically designed to protect individual liberties and rights.
* Civil rights are guaranteed to all citizens under the due process and equal protection clauses of the U.S. Constitution, as well as acts of Congress.

**U.S. Constitution: Bill of Rights**

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| **Bill of Rights** | **List the freedoms contained in each amendment** |
| 1st Amendment | Freedoms of Speech, Press, Religion (Establishment and Free Exercise Clause), Assembly, and Petition |
| 2ND Amendment | Right to bear arms |
| 3RD Amendment | No quartering of troops |
| 4TH Amendment | No illegal searches and seizures |
| 5TH Amendment | Due Process in federal cases...no double jeopardy, eminent domain, no self-incrimination, grand jury |
| 6TH Amendment | Criminal case rights such as right to a lawyer, speedy and public trial by jury |
| 7TH Amendment | Right to a jury in civil cases when exceeding $20 (in 1789) |
| 8TH Amendment | No cruel and unusual punishment or excessive bail or fines for crimes |
| 9TH Amendment | Unenumerated rights guaranteed to the people |
| 10TH Amendment | Powers not granted to the federal government reserved to the states |

**Special Note:** The application of the Bill of Rights is continuously interpreted by the courts.

**First Amendment**

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|  | Establishment Clause | Free Exercise Clause |
| Define, describe and explain | Prohibits government from making any law that establishes religion. What constitutes establishment has been settled on a case by case basis by the Supreme Court over the years. | Prohibits government from making any law that restricts a person from freely practicing their religion. What constitutes free exercise has been settled on a case by case basis by the Supreme Court over the years. |

**Special Note:** The interpretation and application of the First Amendment’s establishment and free exercise clauses reflect an ongoing debate over balancing majoritarian religions practice and free exercise.

**Religion and SCOTUS**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | **Constitutional principles** |
| ***Engel v. Vitale*** | 1962 | New York public school students are read a non-denominational prayer over the intercom every morning. This is challenged on 1st Amendment Establishment Clause grounds. The Supreme Court declares the reading of a school-sponsored prayer as unconstitutional. | -1st Amendment (Establishment Clause) |
| ***Wisconsin v. Yoder*** | 1972 | Due to their beliefs, Amish families wished to stop educating their children after the age of 14. State law required compulsory education until 16. The Supreme Court ruled that an exception should be made in that the compulsory education law violated the 1st Amendment free exercise rights of the Amish. | -1st Amendment (Free Exercise Clause) |

**Speech and Press and SCOTUS**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | **Constitutional principles** |
| *Tinker v. Des Moines* | 1969 | Students protesting the Vietnam War by wearing a black armband are suspended by their school. Suspension is challenged in court on 1st Amendment Freedom of Speech grounds. The Supreme Court upholds the students rights to protest in that the armbands did not create a “material and substantial disruption” to school. Furthermore the Court held that students “do not shed their constitutional freedom of speech rights at the schoolhouse gate.” | -1st Amendment (Freedom of Speech)  -Symbolic speech |
| *Schenck v. U.S.* | 1919 | Charles Schenck is convicted under the Espionage Act for distributing fliers encouraging draft evasion. He challenges his conviction on 1st Amendment freedom of speech grounds. His conviction is upheld and the “clear and present danger” test becomes legal precedent. | -1st Amendment (Freedom of Speech) |
| *New York Times Co. v. U.S.* | 1971 | Nixon Administration seeks to prevent the New York Times and other newspapers from publishing the politically damaging Pentagon Papers. The Supreme Court rules that the papers can be published because the heavy burden on the government to demonstrate a need to exert prior restraint for national security purposes had not been met. | -1st Amendment (Freedom of the Press)  -Prior restraint |

**Special Note:** The Supreme Court has on occasion ruled in favor of states’ power to restrict individual liberty; for example, when speech can be shown to increase the danger to public safety.

**Limiting Speech**

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| Efforts to balance social order and individual freedom are reflected in interpretations of the First Amendment that limit speech.  Explain how 1st Amendment speech can be limited? | Limitations on freedom of speech include laws against hate speech and obscenity as well as speech that could incite violence or harm and speech that is defamatory or libelous in nature. |

**Eighth Amendment and Cruel and Unusual Punishment**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | **Constitutional principles** |
| *Gregg v. Georgia* | 1976 | This case reaffirms the ability of the federal government’s usage of the death penalty in the United States. | -8th Amendment (Cruel and Unusual Punishment) |

**Big Idea #3**: Protections of the Bill of Rights have been selectively incorporated by way of the Fourteenth Amendment’s due process clause to prevent state infringement of basic liberties.

**14th Amendment**

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| **Term** | **Definition and Explanation** |
| Selective Incorporation | The part by part application of the Bill of Rights to state and local government through court decisions |
| Due Process | The requirement that citizens accused of crimes are given fair treatment throughout the entire criminal process from arrest through trial and potentially appeal |
| Equal Protection | Clause in the 14th Amendment that guarantees all citizens are to receive equal protection under the law. Has been interpreted broadly to include many protections that aren’t otherwise specifically spelled out in the Constitution. |

**Selective Incorporation**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | **Constitutional principles** |
| *McDonald v. Chicago* | 2010 | Building upon the previous Heller decision of 2008 which declared the 2nd Amendment guarantees a personal right to bear arms, this case selectively incorporated the 2nd Amendment to state and local governments by overturning a Chicago handgun ban. | -2nd Amendment  -Selective Incorporation  -14th Amendment (Due Process Clause) |

**Special Note:** The Supreme Court’s decisions on the Second Amendment rest upon its constitutional interpretation of individual liberty.

**Special Note:** The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the government regulation of firearms or collection of digital metadata promotes or interferes with public safety and individual rights.

**Due Process and Infringing Upon Individual Rights**

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| **Congressional Act** | **Year** | **Brief description of the Act** | **Constitutional principles** |
| Patriot Act | 2001 | Legislation passed post-9/11 to improve law enforcement’s ability to protect against terrorism | 1st and 4th Amendment concerns and the right to privacy are concerns that have been cited with this legislation |
| USA Freedoms Act | 2015 | Restricts collection of telephone metadata (data used to collect other data) on U.S. citizens | 1st Amendment  4th Amendment  Right to privacy |

**Special Note:** The Supreme Court has on occasion ruled in favor of states’ power to restrict individual liberty; for example, when speech can be shown to increase the danger to public safety.

**Special Note:** Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security, including:

* + Protection against warrantless searches of cell phone data under the Fourth Amendment
  + Limitations placed on bulk collection of telecommunication metadata

**Special Note:** The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the government regulation of firearms or collection of digital metadata promotes or interferes with public safety and individual rights.

**Rights of the Accused**

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| **Court Case** | **Year** | **Brief description of the case and outcome** | **Constitutional principles** |
| *Miranda v. Arizona* | 1966 | Miranda arrested and questioned without his consent and ends up confessing. The Supreme Court rules his due process rights were violated and that arrested suspects going forward need to be informed of their rights later to become known as “Miranda Rights.” | -5th Amendment (Due Process)  -6th Amendment  -14th Amendment (Due Process)  -Selective incorporation |
| *Gideon v. Wainwright* | 1963 | Gideon arrested for breaking into a Florida pool hall. Not granted a lawyer and could not afford one. Sentenced to five years imprisonment. On his appeal, the Supreme Court selectively incorporates the 6th Amendment’s right to counsel. | -6th Amendment (Right to Counsel)  -14th Amendment (Due Process)  -Selective incorporation |

**Special Note:** The Miranda rule involves the interpretation and application of accused persons’ due process rights as protected by the Fifth and Sixth Amendments, yet the Supreme Court has sanctioned a public safety exception that allows unwarned interrogation to stand as direct evidence in court.

**Special Note:** The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable searches and seizures, as represented by:

**Special Note:** Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security, including:

* + The right to legal counsel, a speedy and public trial, and an impartial jury

**Privacy and SCOTUS**

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| **Term** | **Definition** | **Explanation** | **Constitutional principles** |
| Exclusionary Rule | Evidence obtained illegally by law enforcement can not be admitted at trial | Police need to be careful when collecting evidence and serving warrants. Suspects civil liberties need to be respected and correct procedures need to be followed | 4th Amendment Search and Seizure |

**Privacy and SCOTUS**

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| Explain where and how the Right to Privacy is interpreted in Constitution.  Be sure to include both locations in the Constitution with explanations. | | | #1: Alluded to in the 4th Amendment in that citizens have the right to be secure in the persons, houses, papers, and effects  #2: 9th Amendment includes unenumerated rights and just because privacy isn’t explicitly mentioned in the Constitution doesn’t mean that it is not a right that should be protected. | |
| **Court Case** | **Year** | **Brief description of the case and outcome** | | **Constitutional principles** |
| *Roe v. Wade* | 1973 | Building upon the right to privacy implied in the Constitution via Griswold v. Connecticut, the Supreme Court determines in Roe v. Wade that right to privacy extends to the right of a woman to obtain an abortion | | -4th Amendment (Right to privacy)  -9th Amendment (Unenumerated rights)  -14th Amendment (Due Process) |

**Big Idea #4:** The Fourteenth Amendment’s equal protection clause as well as other constitutional provisions have often been used to support the advancement of equality.

**Leadership, Equal Protection, and Motivation of Social Movements**

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|  | Causes of Social Movement | Outcomes of the Social Movement | **Constitutional principles** |
| King’s “Letter from a Birmingham Jail” | Historical discrimination against African Americans in the United States | One of the most influential documents on civil rights to this day...required foundational document for the course | Equality under the law, justice, due process |
| National Organization of Women (NOW) | Historical discrimination against women in the United States | Increased representation of women in legislative, executive, and judicial positions | Equality under the law, no discrimination under the law |
| Pro-Life Movement | Concerns after the decision in *Roe v. Wade* legalizing abortion | More state-led restrictions on abortion | Federalism |
| LGBTQ rights | Legal discriminations against LGBTQ individuals | Increased protections via legislation and court decisions | Equality under the law, no discrimination under the law |

**Big Idea #5:** Public policy promoting civil rights is influenced by citizen–state interactions and constitutional interpretation over time.

**Social Movements and Governments Response**

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| **Case/ Act** | **Year** | **Brief description of the case/act and outcome** | **Constitutional principles** |
| *Plessy v. Ferguson* | 1896 | Plessy arrested for boarding a “whites only” streetcar in New Orleans. His appeal of his arrest is taken to the Supreme Court which determines that “separate but equal” facilities for whites and blacks are legal. | -14th Amendment (Equal Protection Clause) |
| Jim Crow Laws | Post Civil War | State and local laws that enforced segregation in the South long after the passage of the 13th, 14th, and 15th Amendments after the Civil War. | -Federalism  -Separation of Powers  -Checks and Balances |
| *Brown v. Board of Education* | 1954 | Segregation of public schools is determined to be inherently unequal, thus overturning the Plessy precedent. Schools are required to desegregate with “all deliberate speed.” | -14th Amendment (Equal Protection Clause) |
| Civil Rights Act of 1964 | 1964 | Civil rights law that bans discrimination based on race, color, creed, religion, sex, or national origin | -14th Amendment |
| Title IX of the Education Amendments Act of 1972 | 1972 | Protects against discrimination due to sex in any athletic program or activity that receives federal financial assistance | -14th Amendment  -19th Amendment |
| The Voting Rights Act of 1965 | 1965 | Abolished many legal barriers that were being used to prevent African-American voting at the time of passage | -14th Amendment  -15th Amendment  -24th Amendment |

**Special Note:** Decisions demonstrating that minority rights have been restricted at times and protected at other times include.

**Big Idea #6:** The Supreme Court’s interpretation of the U.S. Constitution is influenced by the composition of the Court and citizen–state interactions. At times, it has restricted minority rights and, at others, protected them.

**Restriction and Protection of Civil Rights of Minority Groups**

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| Congressional Acts | Causes of Affirmative Action Acts | Outcome of Affirmative Action Acts | **Constitutional principles** |
| Affirmative Action Acts | Inequality in hiring and awarding of federal contracts for minorities and women. | Increased employment and awarding of federal contracts for minorities and women.  Increased admittance to colleges and universities for minorities and women. | -Equal Protection Clause of the 14th Amendment |

**Special Note:** The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them.

**Special Note:** Decisions demonstrating that minority rights have been restricted at times and protected at other times include:

* The Supreme Court upholding the rights of the majority in cases that limit and prohibit majority-minority districting