The Courts and Political Controversy

POLI 104I

Where are we going?

- 6/27 - the relationship between law and politics.
- 6/29 - incorporation (OB2 – 4a)
- 7/4 - incitement (OB2 – 5a)
- 7/6 - obscenity (OB2 – 5b (first half))
- **7/11 - executive power (OB1 – 4a-d)**
- 7/13 - election law (OB1 - 8c)
- 7/18 - threats (OB2 – 5b (second half))
- 7/20 - guns (OB2 365-387 + Bruen)
- 7/25 - privacy (OB2 – 11 + Dobbs)
- 7/27 - review

Constitutional Amendments

- *Amendments #1-#10 are known as the Bill of Rights (ratified 1791).*

- 1st: Congress shall make no law respecting an **establishment of religion**, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the **press**; or the right of the people peaceably to **assemble**, and to petition the Government for a redress of grievances.
- 14th: [1868] Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens** of the United States and of the State wherein they reside. 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**.

Article 2 of the Constitution

- Section 1: “The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected…Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:-"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”
- Section 2: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”

Article 2 of the Constitution

- Section 2 (continued): “He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”
- “The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.”

Article 2 of the Constitution

- Section 3: “He shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.”
- Section 4: “The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Reading for 7/11

- executive power (OB1 – 4a-d)
  - Inherent and emergency powers (OB1 – 4a)
    - Youngstown Sheet & Tube Co. v. Sawyer
    - New York Times Co. v. United States
  - "Legislation" by the executive branch (OB1 – 4c)
    - Schechter Poultry Corporation v. United States
    - Immigration and Naturalization Service v. Chadha
    - Clinton v. City of New York
    - Trump v. Hawaii
  - Accountability and immunities (OB1-4d)
    - United States v. Nixon
    - Clinton v. Jones

Executive Power

- Claims of broad presidential power are often “invoked to protect national security interests” (OB1:351).
  - In re Neagle (1890): The president’s power to enforce the laws is “not limited to the enforcement of Acts of Congress” but may require other measures, such as protecting Federal judges from violence.
  - In re Debs (1895): The president’s obligation to faithfull execute the laws conveys “certain inherent powers” like preventing strikes in critical industries (but see Youngstown).

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, reversed.
  - Background: “In April of 1952, during the Korean War, President Truman issued an executive order directing Secretary of Commerce Charles Sawyer to seize and operate most of the nation's steel mills. This was done in order to avert the expected effects of a strike by the United Steelworkers of America.”
  - Question Presented: Is the President’s decision to seize the steel mills a usurpation of Congressional lawmaking authority, or necessary under the President’s duty to respond to national emergencies?
  - Majority (Black): The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied…

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Majority (Black): It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President.
  - The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States.“
  - Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Majority (Black): The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces…Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President.
    - The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States…" After granting many powers to the Congress, Article I goes on to provide that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.“
  - Holding: No presidential authority to issue the order. “the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.”

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Concurrence (Jackson): three classifications of Presidential power:
  - "1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.
  - 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.
  - 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.
    - Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system."

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Concurrence (Jackson): “This leaves the current seizure to be justified only by the severe tests under the third grouping, where it can be supported only by any remainder of executive power after subtraction of such powers as Congress may have over the subject. In short, we can sustain the President only by holding that seizure of such strike-bound industries is within his domain and beyond control by Congress. Thus, this Court's first review of such seizures occurs under circumstances which leave presidential power most vulnerable to attack and in the least favorable of possible constitutional postures.”
  - “But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.”

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Concurrence (Clark): “I conclude that where Congress has laid down specific procedures to deal with the type of crisis confronting the President, he must follow those procedures in meeting the crisis; but that in the absence of such action by Congress, the President's independent power to act depends upon the gravity of the situation confronting the nation. I cannot sustain the seizure in question because here…Congress had prescribed methods to be followed by the President in meeting the emergency at hand.”
  - Concurrence (Frankfurter): “Congress made a conscious choice of policy in a field full of perplexity and peculiarly within legislative responsibility for choice. In formulating legislation for dealing with industrial conflicts, Congress could not more clearly and emphatically have withheld authority than it did in 1947.”
    - By the Labor Management Relations Act of 1947, Congress said to the President, "You may not seize. Please report to us and ask for seizure power if you think it is needed in a specific situation

Executive Power

- Youngstown Sheet & Tube Co. v. Sawyer (1952): decided 6-3, affirmed.
  - Dissent (Vinson): “we are not called upon today to expand the Constitution to meet a new situation. For, in this case, we need only look to history and time-honored principles of constitutional law.”
  - “The President reported to Congress the morning after the seizure that he acted because a work stoppage in steel production would immediately imperil the safety of the Nation by preventing execution of the legislative programs for procurement of military equipment. And, while a shutdown could be averted by granting the price concessions requested by plaintiffs, granting such concessions would disrupt the price stabilization program also enacted by Congress. Rather than fail to execute either legislative program, the President acted to execute both.”
  - “Whatever the extent of Presidential power on more tranquil occasions, and whatever the right of the President to execute legislative programs as he sees fit without reporting the mode of execution to Congress, the single Presidential purpose disclosed on this record is to faithfully execute the laws by acting in an emergency to maintain the status quo, thereby preventing collapse of the legislative programs until Congress could act.”

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
  - Ten opinions! One per curiam opinion setting out the decision.
  - Background: “In what became known as the "Pentagon Papers Case," the Nixon Administration [via the Department of Justice] attempted to prevent the New York Times and Washington Post from publishing materials belonging to a classified Defense Department study regarding the history of United States activities in Vietnam. The President argued that prior restraint was necessary to protect national security. This case was decided together with United States v. Washington Post Co.”
  - Majority (per curiam):
    “Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity…The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint…The District Court for the Southern District of New York in the New York Times case and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit in the Washington Post case held that the Government had not met that burden. We agree.”

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
  - Concurrence (Black, Douglas): “I believe that every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment. In my view it is unfortunate that some of my Brethren are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment.”
  - “To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make "secure." No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.”

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
  - Concurrence (Douglas, Black): “Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be "uninhibited, robust, and wide-open" debate.”
  - Concurrence (Brennan): “…even if it be assumed that some of the interim restraints were proper in the two cases before us, that assumption has no bearing upon the propriety of similar judicial action in the future…the First Amendment stands as an absolute bar to the imposition of judicial restraints in circumstances of the kind presented by these cases.”
  - Concurrence (Stewart, White): “In the governmental structure created by our Constitution, the Executive is endowed with enormous power in the two related areas of national defense and international relations…”

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
- Concurrence (Stewart, White): “In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry - in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For without an informed and free press there cannot be an enlightened people.
- Yet it is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy. Other nations can hardly deal with this Nation in an atmosphere of mutual trust unless they can be assured that their confidences will be kept. And within our own executive departments, the development of considered and intelligent international policies would be impossible if those charged with their formulation could not communicate with each other freely, frankly, and in confidence. In the area of basic national defense the frequent need for absolute secrecy is, of course, self-evident...”
- I am convinced that the Executive is correct with respect to some of the documents involved. But I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our Nation or its people. That being so, there can under the First Amendment be but one judicial resolution of the issues before us. I join the judgments of the Court.

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
- Concurrence (White, Stewart): “I do not say that in no circumstances would the First Amendment permit an injunction against publishing information about government plans or operations. Nor, after examining the materials the Government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial damage to public interests. Indeed, I am confident that their disclosure will have that result. But I nevertheless agree that the United States has not satisfied the very heavy burden that it must meet to warrant an injunction against publication in these cases, at least in the absence of express and appropriately limited congressional authorization for prior restraints in circumstances such as these.”
- Concurrence (Marshall): “It would…be utterly inconsistent with the concept of separation of powers for this Court to use its power of contempt to prevent behavior that Congress has specifically declined to prohibit.”

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
- Dissent (Burger): Because this case has been decided with “unseemly haste,” we don’t know anything about the content of the papers.
  - The NYT sat on the story for four months, and now we are being asked to decide within days because of some alleged public “right to know.”
  - The papers and the government should have negotiated partial declassification.
- Dissent (Harlan, Burger, Blackmun): Presidents are entitled to great deference in foreign affairs; because of the haste with which this decision was reached, and in the absence of proper investigation of the “extraordinarily important and difficult questions involved,” we will defer to the President about what is necessary to protect national security.

Executive Power

- New York Times Co. v. United States (1971): decided 6-3, procedure complex.
- Dissent (Blackmun): “The First Amendment, after all, is only one part of an entire Constitution. Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs and places in that branch the responsibility for the Nation's safety. Each provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions. First Amendment absolutism has never commanded a majority of this Court. See, for example, Near v. Minnesota, 283 U.S. 697, 708 (1931), and Schenck v. United States, 249 U.S. 47, 52 (1919).”
- “What is needed here is a weighing, upon properly developed standards, of the broad right of the press to print and of the very narrow right of the Government to prevent. Such standards are not yet developed.”

Executive Power

- "Legislation" by the Executive Branch
  - Congress delegates powers to the President and to Executive Branch agencies
    - Little delegated in the 19th century, more in the 20th during Great Depression and major wars.
  - Nondelegation doctrine ("undue delegation"): "delegated power may not be redelegated."
    - Congress can't delegate its legislative power to the President, but can give the executive wide discretion in achieving goals that Congress has set. Lines are difficult to draw here.
- Schechter Poultry Corporation v. United States (1935): decided 9-0; reversed.
  - Background: "Under the National Industrial Recovery Act, Congress allowed the President to regulate certain industries by distributing authority to develop codes of conduct among business groups and boards in those industries. The Act did not provide standards for the President or the business groups in implementing its objectives. When Schechter Poultry Corp. was indicted for violating a business code governing the poultry industry in New York City, it argued that the law was an unconstitutional violation of the non-delegation doctrine."

Executive Power

- Schechter Poultry Corporation v. United States (1935): decided 9-0; reversed.
  - Question Presented: “Did Congress unconstitutionally delegate legislative power to the President by giving him power to regulate certain industries without also providing guiding standards?”
  - Majority (Hughes): “The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.”
  - “Accordingly, we look to the statute to see whether Congress has overstepped these limitations-whether Congress in authorizing 'codes of fair competition' has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others…The act does not define “fair competition”…

Executive Power

- Schechter Poultry Corporation v. United States (1935): decided 9-0; reversed.
  - Majority (Hughes): “The question, then, turns upon the authority which section 3 of the Recovery Act vests in the President to approve or prescribe. If the codes have standing as penal statutes, this must be due to the effect of the executive action. But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry. See Panama Refining Company v. Ryan, supra, and cases there reviewed.”
  - “Accordingly we turn to the Recovery Act to ascertain what limits have been set to the exercise of the President's discretion…the President in approving a code may impose his own conditions, adding to [295 U.S. 495, 539] or taking from what is proposed, as 'in his discretion' he thinks necessary 'to effectuate the policy' declared by the act….this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country.”

Executive Power

- Schechter Poultry Corporation v. United States (1935): decided 9-0; reversed.
  - Majority (Hughes): “To summarize and conclude upon this point: Section 3 of the Recovery Act (15 USCA 703 is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them.”
  - “In view of the scope of that broad declaration and of the [295 U.S. 495, 542] nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.”

Executive Power

- Schechter Poultry Corporation v. United States (1935): decided 9-0; reversed.
  - Concurrence (Cardozo, Stone): “If codes of fair competition are codes eliminating 'unfair' methods of competition ascertained upon inquiry to prevail in one industry or another, there is no unlawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered.”
  - “But there is another conception of codes of fair competition…which leads to very different consequences. By this other conception a code is not to be restricted to the elimination of business practices that would be characterized by general acceptation as oppressive or unfair. It is to include whatever ordinances may be desirable or helpful for the well-being or prosperity of the industry affected. In that view, the function of its adoption is not merely negative, but positive; the planning of improvements as well as the extirpation of abuses.”
  - “If that conception shall prevail, anything that Congress may do within the limits of the commerce clause for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less…”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Background: “In one section of the Immigration and Nationality Act, Congress authorized either House of Congress to invalidate and suspend deportation rulings of the United States Attorney General. Chadha had stayed in the U.S. past his visa deadline. Though Chadha conceded that he was deportable, an immigration judge suspended his deportation. The House of Representatives voted without debate or recorded vote to deport Chadha. This case was decided together with United States House of Representatives v. Chadha and United States Senate v. Chadha.”
  - Question Presented: Does the Immigration and Nationality Act violate the separation of powers doctrine by allowing a unicameral veto of executive actions?
  - Holding: the resolution of the House of Representatives vetoing the Attorney General's determination is “constitutionally invalid, unenforceable, and not binding.”
    - Bicameralism principle; presentment clause
  - “Congress may not promulgate a statute granting to itself a legislative veto over actions of the executive branch inconsistent with the bicameralism principle and Presentment Clause of the United States Constitution.”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Majority (Burger): “the purposes underlying the Presentment Clauses, Art. I, 7, cls. 2, 3, and the bicameral requirement of Art. I, 1, and 7, cl. 2, guide our resolution of the important question presented in these cases.”
  - Presentment clause: requires legislation to pass both houses of Congress in identical form for it to be considered a genuine act of Congress.
    - Must also be signed by the President (or veto overridden by 2/3 majority).
  - “We see therefore that the Framers were acutely conscious that the bicameral requirement and the Presentment Clauses would serve essential constitutional functions. The President's participation in the legislative process was to protect the Executive Branch from Congress and to protect the whole people from improvident laws. The division of the Congress into two distinctive bodies assures that the legislative power would be exercised only after opportunity for full study and debate in separate settings. The President's unilateral veto power, in turn, was limited by the power of two-thirds of both Houses of Congress to overrule a veto thereby precluding final arbitrary action of one person.”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Majority (Burger): “Examination of the action taken here by one House pursuant to 244(c)(2) reveals that it was essentially legislative in purpose and effect.”
  - “The legislative character of the one-House veto in these cases is confirmed by the character of the congressional action it supplants. Neither the House of Representatives nor the Senate contends that, absent the veto provision in 244(c)(2), either of them, or both of them acting together, could effectively require the Attorney General to deport an alien once the Attorney General, in the exercise of legislatively delegated authority, had determined the alien should remain in the United States.”
  - “Since it is clear that the action by the House under 244(c)(2) was not within any of the express constitutional exceptions authorizing one House to act alone, and equally clear that it was an exercise of legislative power, that action was subject to the standards prescribed in Art. I.”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Majority (Burger): “The veto authorized by 244(c)(2) doubtless has been in many respects a convenient shortcut; the "sharing" with the Executive by Congress of its authority over aliens in this manner is, on its face, an appealing compromise. In purely practical terms, it is obviously easier for action to be taken by one House without submission to the President; but it is crystal clear from the records of the Convention, contemporaneous writings and debates, that the Framers ranked other values higher than efficiency.”
  - “The records of the Convention and debates in the states preceding ratification underscore the common desire to define and limit the exercise of the newly created federal powers affecting the states and the people. There is unmistakable expression of a determination that legislation by the national Congress be a step-by-step, deliberate and deliberative process.”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Majority (Burger): “The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked.”
  - “There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit constitutional standards may be avoided, either by the Congress or by the President. See Youngstown Sheet & Tube Co. v. Sawyer (1952). With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.”

Executive Power

- Immigration and Naturalization Service v. Chadha (1983): decided 7-2, affirmed.
  - Dissent (White): The prominence of the legislative veto mechanism in our contemporary political system and its importance to Congress can hardly be overstated. It has become a central means by which Congress secures the accountability of executive and independent agencies.
    - “Today the Court not only invalidates 244(c)(2) of the Immigration and Nationality Act, but also sounds the death knell for nearly 200 other statutory provisions in which Congress has reserved a "legislative veto.“”
  - “For all these reasons, the apparent sweep of the Court's decision today is regrettable. The Court's Art. I analysis appears to invalidate all legislative vetoes irrespective of form or subject. Because the legislative veto is commonly found as a check upon rulemaking by administrative agencies and upon broad-based policy decisions of the Executive Branch, it is particularly unfortunate that the Court reaches its decision in cases involving the exercise of a veto over deportation decisions regarding particular individuals.”
    - “Courts should always be wary of striking statutes as unconstitutional; to strike an entire class of statutes based on consideration of a somewhat atypical and more readily indictable exemplar of the class is irresponsible.”

Executive Power

- Clinton v. City of New York (1998): decided 6-3;
  - Background: “This case consolidates two separate challenges to the constitutionality of two cancellations, made by President William J. Clinton, under the Line Item Veto Act ("Act"). In the first, the City of New York, two hospital associations, a hospital, and two health care unions, challenged the President's cancellation of a provision in the Balanced Budget Act of 1997 which relinquished the Federal Government's ability to recoup nearly $2.6 billion in taxes levied against Medicaid providers by the State of New York. In the second, the Snake River farmer's cooperative and one of its individual members challenged the President's cancellation of a provision of the Taxpayer Relief Act of 1997. The provision permitted some food refiners and processors to defer recognition of their capital gains in exchange for selling their stock to eligible farmers' cooperatives. After a district court held the Act unconstitutional, the Supreme Court granted certiorari on expedited appeal.”
  - Question Presented: Does the President’s power under the Line Item Veto Act to selectively cancel individual portions of bills violate the Presentment Clause of Article I?”

Executive Power

- Clinton v. City of New York (1998): decided 6-3;
  - Majority (Stevens): Plaintiffs have standing: both the City of New York, and its affiliates, and the farmers' cooperative suffered sufficiently immediate and concrete injuries to sustain their standing to challenge the President's actions.
  - Summary: “Under the Presentment Clause, legislation that passes both Houses of Congress must either be entirely approved (i.e. signed) or rejected (i.e. vetoed) by the President. The Court held that by canceling only selected portions of the bills at issue, under authority granted him by the Act, the President in effect "amended" the laws before him. Such discretion, the Court concluded, violated the "finely wrought" legislative procedures of Article I as envisioned by the Framers.”
  - “The Line Item Veto Act gives the President the power to "cancel in whole" three types of provisions that have been signed into law: "(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit." 2 U.S.C. § 691(a) (1994 ed., Supp. II). It is undisputed that the New York case involves an "item of new direct spending" and that the Snake River case involves a "limited tax benefit" as those terms are defined in the Act. It is also undisputed that each of those provisions had been signed into law pursuant to Article I, §7, of the Constitution before it was canceled.”

Executive Power

- Clinton v. City of New York (1998): decided 6-3;
  - Majority (Stevens): “It is argued that the Line Item Veto Act merely confers comparable discretionary authority over the expenditure of appropriated funds. The critical difference between this statute and all of its predecessors, however, is that unlike any of them, this Act gives the President the unilateral power to change the text of duly enacted statutes. None of the Act's predecessors could even arguably have been construed to authorize such a change.
  - “…we express no opinion about the wisdom of the procedures authorized by the Line Item Veto Act.”
  - “because we conclude that the Act's cancellation provisions violate Article I, §7, of the Constitution, we find it unnecessary to consider the District Court's alternative holding that the Act "impermissibly disrupts the balance of powers among the three branches of government.”
  - “our decision rests on the narrow ground that the procedures authorized by the Line Item Veto Act are not authorized by the Constitution.”

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Background: “On January 27, 2017, President Donald Trump signed Executive Order No. 13,769 (EO-1), which, among other things, suspended entry for 90 days of foreign nationals from seven countries identified by Congress or the Executive as presenting heightened terrorism-related risks.”
  - “On March 6, 2017, President Trump issued Executive Order No. 13,780 (EO-2). Section 2(c) of EO-2 directed that entry of nationals from six of the seven countries designated in EO-1 be suspended for 90 days from the effective date of the order, citing a need for time to establish adequate standards to prevent infiltration by foreign terrorists.”
  - “On September 24, 2017—the same day EO-2 was expiring—President Donald Trump issued a Proclamation restricting travel to the United States by citizens from eight countries. That Proclamation too was challenged in federal court as attempting to exercise power that neither Congress nor the Constitution vested in the president. The Ninth Circuit struck down the Proclamation, and the Supreme Court granted review.”

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Question Presented:
    - “Are the plaintiffs’ claims challenging the president’s authority to issue the Proclamation reviewable (“justiciable”) in federal court?
    - Does the president have the statutory authority to issue the Proclamation?
    - Is the global injunction barring enforcement of parts of the Proclamation impermissibly overbroad?
    - Does the Proclamation violate the Establishment Clause of the Constitution?”
  - Holding: “Under Section 1182(f) of the Immigration and Nationality Act (INA), the president has "broad discretion" to suspend the entry of non-citizens into the United States. The Proclamation was the result of a “worldwide, multi-agency review” that determined that entry by certain non-citizens would be detrimental to the interests of the United States. Thus, the Proclamation does not exceed any statutory power of the president.”

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Holding: “Nor does the Proclamation violate another statute, Section 1152(a)(1)(A), which bars discrimination based on nationality in the issuance of visas. While that section prohibits discrimination, it does not limit the president's authority to block the entry of nationals of some countries, just as several other presidents have done before President Trump.
  - Finally, the majority considered the plaintiffs' Establishment Clause claim. On its face, the majority found the Proclamation did not favor or disfavor any particular religion. But even looking behind the face of the Proclamation, the majority found that the facts that many majority-Muslim countries were not subject to restrictions and that some non-majority-Muslim countries were subject to the restrictions supported the government's contention that the Proclamation was not based on anti-Muslim animus and was instead based on "a sufficient national security justification.”"

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Majority (Roberts): “By its terms, §1182(f) exudes deference to the President in every clause…. It is therefore unsurprising that we have previously observed that §1182(f) vests the President with "ample power" to impose entry restrictions in addition to those elsewhere enumerated in the INA…The Proclamation falls well within this comprehensive delegation.”
  - “We now turn to plaintiffs' claim that the Proclamation was issued for the unconstitutional purpose of excluding Muslims. Because we have an obligation to assure ourselves of jurisdiction under Article III, we begin by addressing the question whether plaintiffs have standing to bring their constitutional challenge.
  - “The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Our cases recognize that "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson* v. *Valente*, 456 U. S. 228, 244 (1982). Plaintiffs believe that the Proclamation violates this prohibition by singling out Muslims for disfavored treatment.”

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Majority (Roberts): “The admission and exclusion of foreign nationals is a "fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." For today's purposes, the Court assumes that it may look behind the face of the Proclamation to the extent of applying rational basis review, i.e., whether the entry policy is plausibly related to the Government's stated objective to protect the country and improve vetting processes.
  - Given the standard of review, it should come as no surprise that the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny. On the few occasions where we have done so, a common thread has been that the laws at issue lack any purpose other than a "bare . . . desire to harm a politically unpopular group.“
  - On the few occasions where the Court has struck down a policy as illegitimate under rational basis scrutiny, a common thread has been that the laws at issue were "divorced from any factual context from which [the Court] could discern a relationship to legitimate state interests.” The Proclamation does not fit that pattern. It is expressly premised on legitimate purposes and says nothing about religion. The entry restrictions on Muslim-majority nations are limited to countries that were previously designated by Congress or prior administrations as posing national security risks.

Executive Power

- Trump v. Hawaii (2018): decided 5-4; reversed.
  - Dissent (Sotomayor): “Based on the evidence in the record, a reasonable observer would conclude that the Proclamation was motivated by anti-Muslim animus.
  - To determine whether plaintiffs have proved an Establishment Clause violation, the Court asks whether a reasonable observer would view the government action as enacted for the purpose of disfavoring a religion.”
  - In answering that question, this Court has generally considered the text of the government policy, its operation, and any available evidence regarding "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by" the decisionmaker.
  - Taking all the relevant evidence together, a reasonable observer would conclude that the Proclamation was driven primarily by anti-Muslim animus, rather than by the Government's asserted national-security justifications.”

Executive Power

- United States v. Nixon (1974): decided 9-0; affirmed.
  - Background: “A grand jury returned indictments against seven of President Richard Nixon's closest aides in the Watergate affair. The special prosecutor appointed by Nixon and the defendants sought audio tapes of conversations recorded by Nixon in the Oval Office. Nixon asserted that he was immune from the subpoena claiming "executive privilege," which is the right to withhold information from other government branches to preserve confidential communications within the executive branch or to secure the national interest. Decided together with Nixon v. United States.”
  - Question Presented: “Is the President's right to safeguard certain information, using his "executive privilege" confidentiality power, entirely immune from judicial review?”
  - Holding “.. .neither the doctrine of separation of powers, nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified, presidential privilege. The Court granted that there was a limited executive privilege in areas of military or diplomatic affairs, but gave preference to "the fundamental demands of due process of law in the fair administration of justice." Therefore, the president must obey the subpoena and produce the tapes and documents. Nixon resigned shortly after the release of the tapes.”

Executive Power

- United States v. Nixon (1974): decided 9-0; affirmed.
  - Note: Justice Rehnquist recused himself due to close association with Nixon administration officials prior to his appointment to the court.
  - Majority (Burger): [Note: O'Brien excerpts only the part of the opinion dealing with Nixon's claim of executive privilege"]
  - "we turn to the claim that the subpoena should be quashed because it demands "confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce." App. 48a. The first contention is a broad claim that the separation of powers doctrine precludes judicial review of a President's claim of privilege. The second contention is that if he does not prevail on the claim of absolute privilege, the court should hold as a matter of constitutional law that the privilege prevails over the subpoena *duces tecum*."

Executive Power

- United States v. Nixon (1974): decided 9-0; affirmed.
  - Majority (Burger): “In support of his claim of absolute privilege, the President's counsel urges two grounds, one of which is common to all governments and one of which is peculiar to our system of separation of powers. The first ground is the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussion…The second ground asserted by the President's counsel in support of the claim of absolute privilege rests on the doctrine of separation of powers. Here it is argued that the independence of the Executive Branch within its own sphere [citations] insulates a President from a judicial subpoena in an ongoing criminal prosecution, and thereby protects confidential Presidential communications.”
  - “However, neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”

Executive Power

- United States v. Nixon (1974): decided 9-0; affirmed.
- Majority (Burger): “The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for *in camera* inspection with all the protection that a district court will be obliged to provide.
- The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art. III. In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.”

Executive Power

- Clinton v. Jones (1997): decided 9-0, affirmed.
  - Background: “Paula Corbin Jones sued President Bill Clinton. She alleged that while she was an Arkansas state employee, she suffered several "abhorrent" sexual advances from then Arkansas Governor Clinton. Jones claimed that her continued rejection of Clinton's advances ultimately resulted in punishment by her state supervisors. Following a District Court's grant of Clinton's request that all matters relating to the suit be suspended, pending a ruling on his prior request to have the suit dismissed on grounds of presidential immunity, Clinton sought to invoke his immunity to completely dismiss the Jones suit against him. While the District Judge denied Clinton's immunity request, the judge ordered the stay of any trial in the matter until after Clinton's Presidency. On appeal, the Eighth Circuit affirmed the dismissal denial but reversed the trial deferment ruling since it would be a "functional equivalent" to an unlawful grant of temporary presidential immunity.”
  - Question Presented: Is a serving President, for separation of powers reasons, entitled to absolute immunity from civil litigation arising out of events which transpired prior to his taking office?

Executive Power

- Clinton v. Jones (1997): decided 9-0, affirmed.
  - Holding: “The Constitution does not grant a sitting President immunity from civil litigation except under highly unusual circumstances. After noting the great respect and dignity owed to the Executive office, the Court held that neither separation of powers nor the need for confidentiality of high-level information can justify an unqualified Presidential immunity from judicial process.”
  - Majority (Stevens): “Petitioner's principal submission--that in all but the most exceptional cases, the Constitution affords the President temporary immunity from civil damages litigation arising out of events that occurred before he took office--cannot be sustained on the basis of precedent. [even thought the Court had ruled in Nixon v. Fitzgerald that Presidents *do* have immunity from civil damage actions arising out of official duties].
  - The principal rationale for affording Presidents immunity from damages actions based on their official acts--i.e., to enable them to perform their designated functions effectively without fear that a particular decision may give rise to personal liability provides no support for an immunity for unofficial conduct…Our central concern was to avoid rendering the President "unduly cautious in the discharge of his official duties."”

Executive Power

- Clinton v. Jones (1997): decided 9-0, affirmed.
  - Majority (Stevens): “This reasoning provides no support for an immunity for unofficial conduct.
  - As our opinions have made clear, immunities are grounded in "the nature of the function performed, not the identity of the actor who performed it." Petitioner's effort to construct an immunity from suit for unofficial acts grounded purely in the identity of his office is unsupported by precedent.”
  - Petitioner's strongest argument supporting his immunity claim is based on the text and structure of the Constitution. He does not contend that the occupant of the Office of the President is "above the law," in the sense that his conduct is entirely immune from judicial scrutiny. The President argues merely for a postponement of the judicial proceedings that will determine whether he violated any law. His argument is grounded in the character of the office that was created by Article II of the Constitution, and relies on separation of powers principles that have structured our constitutional arrangement since the founding.”

Executive Power

- Clinton v. Jones (1997): decided 9-0, affirmed.
  - Majority (Stevens): “Rather than arguing that the decision of the case will produce either an aggrandizement of judicial power or a narrowing of executive power, petitioner contends that--as a by product of an otherwise traditional exercise of judicial power--burdens will be placed on the President that will hamper the performance of his official duties…Petitioner's predictive judgment finds little support in either history or the relatively narrow compass of the issues raised in this particular case.
  - In sum, "[i]t is settled law that the separation of powers doctrine does not bar every exercise of jurisdiction over the President of the United States.“ [citing *Fitzgerald*]. If the Judiciary may severely burden the Executive Branch by reviewing the legality of the President's official conduct, and if it may direct appropriate process to the President himself, it must follow that the federal courts have power to determine the legality of his unofficial conduct. The burden on the President's time and energy that is a mere by product of such review surely cannot be considered as onerous as the direct burden imposed by judicial review and the occasional invalidation of his official actions.
  - We therefore hold that the doctrine of separation of powers does not require federal courts to stay all private actions against the President until he leaves office.”