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Issue 1. Should U.S. Citizens Who Are Declared to Be “Enemy Combatants” Be Able to Contest Their Detention Before a Judge? 2

YES: Sandra Day O’Connor, from Majority Opinion, *Hamdi v. Rumsfeld*, U.S. Supreme Court (June 28, 2004) 4

NO: Clarence Thomas, from Minority Opinion, *Hamdi v. Rumsfeld*, U.S. Supreme Court (June 28, 2004) 10

Supreme Court Justice Sandra Day O’Connor finds that the Authorization for Use of Military Force passed by Congress does not authorize the indefinite detention of a person found to be an “enemy combatant.” Justice Clarence Thomas believes that the detention of an “enemy combatant” is permitted under the federal government’s war powers.

Issue 2. Should Foreign Nationals Detained at Guantanamo Bay as “Enemy Combatants” Be Able to Contest Their Detention Before a Judge? 17

YES: Anthony Kennedy, from Majority Opinion, *Boumediene v. Bush*, U.S. Supreme Court (June 12, 2008) 19

NO: Antonin Scalia, from Dissenting Opinion, *Boumediene v. Bush*, U.S. Supreme Court (June 12, 2008) 24

Supreme Court Justice Anthony Kennedy holds that foreign nationals being held at Guantanamo Bay have the constitutional privilege of habeas corpus. Supreme Court Justice Antonin Scalia argues that there is no basis in American law or history for giving habeas hearings to foreign nationals detained abroad during a military conflict.

Issue 3. Does the President Possess Constitutional Authority to Order Wiretaps on U.S. Citizens? 30

YES: U.S. Department of Justice, from “Legal Authorities Supporting the Activities of the National Security Agency Described by the President” (January 19, 2006) 32

NO: Letter to Congress, from 14 Law Professors and Former Government Attorneys to Congressional Leaders (January 2, 2006) 46

The Department of Justice argues that the Constitution gives the president the right to engage in electronic surveillance, with or without congressional approval or judicial oversight. It further claims that the NSA wiretapping program ordered by President Bush does not violate federal law, specifically the Foreign Intelligence Surveillance Act (FISA), because such surveillance falls under the auspices of the military response to the 9/11 attacks that was authorized by Congress. Several lawyers with expertise in constitutional law or experience in the federal government argue that the NSA wiretapping program violates FISA and the Fourth Amendment of the U.S. Constitution. They further argue that the president does not have any inherent ability either to engage in warrantless wiretapping or to violate federal law that limits such surveillance.

Issue 4. Should Someone Held by the CIA and Interrogated in a Foreign Country Be Allowed to Sue the U.S. Government? 57

YES: **American Civil Liberties Union**, from Brief for Plaintiff-Appellant, *El-Masri v. Tenet, et al.*, U.S. Court of Appeals for the Fourth Circuit (September 25, 2006) 59

NO: **Robert King**, from Opinion, *El-Masri v. Tenet, et al.*, U.S. Court of Appeals for the Fourth Circuit (March 2, 2007) 68

In a brief submitted to the Court of Appeals, the American Civil Liberties Union, representing Mr. El-Masri, argues that dismissing his case outright because the government claims state secrets might be revealed as both dangerous and unnecessary. In the decision handed down by the Court of Appeals, Judge Robert King rejects the ACLU position and argues that a plaintiff cannot bring a lawsuit against the government when the government claims that the case might reveal information that could endanger national security.

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Issue 5. Is It Constitutional to Ban “Partial-Birth” Abortions Without Providing for an Exception to Protect the Health of the Mother? 82

YES: **Anthony Kennedy**, from Majority Opinion, *Gonzales v. Carhart*, U.S. Supreme Court (April 18, 2007) 84

NO: **Ruth Bader Ginsburg**, from Dissenting Opinion, *Gonzales v. Carhart*, U.S. Supreme Court (April 18, 2007) 92

Justice Anthony Kennedy rules that the federal Partial-Birth Abortion Ban Act of 2003 was constitutional even without a “health exception” for the woman. In dissent, Justice Ruth Bader Ginsburg argues that the law clearly contravenes the Court’s holding in prior cases that any regulation limiting a woman’s access to abortion, even postviability, must include a health exception.

Issue 6. Are Restrictions on Physician-Assisted Suicide Constitutional? 106

YES: **William H. Rehnquist**, from Majority Opinion, *Washington et al. v. Glucksberg et al.*, U.S. Supreme Court (June 26, 1997) 108

NO: Stephen Reinhardt, from Opinion for the Court, *Compassion in Dying v. State of Washington*, U.S. Court of Appeals for the Ninth Circuit (1996) 119

Former Supreme Court Chief Justice William H. Rehnquist rules that although patients have the right to refuse life-sustaining treatment, physician-assisted suicide is not constitutionally protected. Judge Stephen Reinhardt argues that forbidding physician-assisted suicide in the cases of competent, terminally ill patients violates the due process clause of the Constitution.

Issue 7. Does the Sharing of Music Files Through the Internet Violate Copyright Laws? 131

YES: Ruth Bader Ginsburg, from Concurring Opinion, *Metro-Goldwyn-Mayer Studios v. Grokster*, U.S. Supreme Court (June 27, 2005) 133

NO: Stephen Breyer, from Concurring Opinion, *Metro-Goldwyn-Mayer Studios v. Grokster*, U.S. Supreme Court (June 27, 2005) 138

Justice Ginsburg believes that the copyright laws are violated by a company when its software is used primarily for illegal file sharing, and lawful uses in the future are unlikely. Justice Breyer does not want the copyright laws to hinder technological innovation and is more willing to take into account the potential use of the software for lawful file sharing.

Issue 8. Can the Police Require Individuals to Identify Themselves? 151

YES: Anthony Kennedy, from Majority Opinion, *Larry D. Hiibel v. Sixth Judicial District Court of Nevada*, U.S. Supreme Court (June 21, 2004) 153

NO: James P. Logan, Jr., Harriet E. Cummings, and Robert E. Dolan, from A Brief for the Petitioner, *Hiibel v. Sixth Judicial District Court of Nevada*, U.S. Supreme Court (2004) 159

Supreme Court Justice Anthony Kennedy holds that requiring an individual to identify himself does not violate the right to remain silent and does not infringe rights guaranteed by the Fourth and Fifth Amendments. In a brief filed by the Office of the Nevada State Public Defender, the argument is put forward that when persons are detained on less than probable cause, it is unconstitutional for police to demand that such persons identify themselves and provide the police with their names.

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Issue 9. Do Religious Groups Have a Right to Use Public School Facilities After Hours? 170

YES: Clarence Thomas, from Majority Opinion, *Good News Club et al., v. Milford Central School*, U.S. Supreme Court (June 11, 2001) 172

NO: David Souter, from Dissenting Opinion, *Good News Club et al., v. Milford Central School*, U.S. Supreme Court (June 11, 2001) 182

Supreme Court Justice Clarence Thomas affirms the right of religious groups to use school facilities after the school day ends, maintaining that restricting such use is a violation of free speech rights. Supreme Court Justice David Souter, dissenting from the Court's opinion, contends that the use of school facilities by religious groups blurs the line between public classroom instruction and private religious indoctrination and therefore violates the Establishment Clause of the Constitution.

Issue 10. Is a Strip Search of Middle School Students That Is Aimed at Finding Drugs Impermissible Under the Fourth Amendment? 190

YES: **David Souter**, from Majority Opinion, *Safford Unified School District, et al., v. April Redding*, U.S. Supreme Court (June 25, 2009) 192

NO: **Clarence Thomas**, from Dissenting Opinion, *Safford Unified School District, et al., v. April Redding*, U.S. Supreme Court (June 25, 2009) 200

Supreme Court Justice David Souter holds that a search in school requires a reasonable belief that evidence of wrongdoing will be found and that the search is not excessively intrusive in light of the age and sex of the student. Supreme Court Justice Clarence Thomas argues that the Fourth Amendment was not violated when there is reasonable suspicion that the student is in possession of drugs banned by school policy and the search is in an area where small pills could be concealed.

Issue 11. Can a School Punish a Student for Speech at a School-Supervised Event Off of School Grounds When That Speech Could Be Viewed as Promoting Illegal Drug Use? 210

YES: **John Roberts**, from Majority Opinion, *Deborah Morse, et al., v. Joseph Frederick*, U.S. Supreme Court (June 25, 2007) 212

NO: **John Paul Stevens**, from Dissenting Opinion, *Deborah Morse, et al., v. Joseph Frederick*, U.S. Supreme Court (June 25, 2007) 221

Supreme Court Chief Justice John Roberts rules that a student's First Amendment rights are not violated by restrictions on speech that can reasonably be regarded as encouraging illegal drug use. Supreme Court Justice John Paul Stevens argues that an ambiguous reference to drugs does not justify limiting a student's speech.

Issue 12. Does the "Cruel and Unusual Punishment" Clause of the Eighth Amendment Bar the Imposition of the Death Penalty on Juveniles? 233

YES: **Anthony Kennedy**, from Majority Opinion, *Roper v. Simmons*, U.S. Supreme Court (March 1, 2005) 235

NO: **Antonin Scalia**, from Dissenting Opinion, *Roper v. Simmons*, U.S. Supreme Court (March 1, 2005) 241

Supreme Court Justice Anthony Kennedy holds that the Constitution prohibits the execution of a person who was under the age of eighteen at

the time of the offense. Supreme Court Justice Antonin Scalia believes that the Constitution does not preclude the execution of a juvenile.

Issue 13. Is a Sentence of Life in Prison for Stealing \$150 Worth of Videotapes Constitutional? 250

YES: **Sandra Day O'Connor**, from Majority Opinion, *Lockyer v. Andrade*, U.S. Supreme Court (March 5, 2003) 252

NO: **David Souter**, from Dissenting Opinion, *Lockyer v. Andrade*, U.S. Supreme Court (March 5, 2003) 260

Supreme Court Justice Sandra Day O'Connor rules that a decision in a case involving the theft of \$150 worth of merchandise that resulted in two consecutive terms of 25 years to life in prison for a "third strike" conviction was not "grossly disproportional" to the crime nor "contrary to, or an unreasonable application of, clearly established federal law." Supreme Court Justice David Souter argues that under several prior Supreme Court decisions, the "third strike" punishment in this case was grossly disproportional to the crime committed.

Issue 14. Is Drug Testing of Students Who Participate in Extracurricular Activities Permitted Under the Fourth Amendment? 266

YES: **Clarence Thomas**, from Majority Opinion, *Board of Education of Independent School District No. 92 of Pottawatomie County, et al., v. Lindsay Earls, et al.*, U.S. Supreme Court (June 27, 2002) 268

NO: **Ruth Bader Ginsburg**, from Dissenting Opinion, *Board of Education of Independent School District No. 92 of Pottawatomie County, et al., v. Lindsay Earls, et al.*, U.S. Supreme Court (June 27, 2002) 276

Supreme Court Justice Clarence Thomas finds that a school policy requiring all middle and high school students to consent to drug testing in order to participate in any extracurricular activity does not violate the Fourth Amendment. Supreme Court Justice Ruth Bader Ginsburg dissents, arguing that while testing student athletes may be justifiable, there is no justification for invading the privacy of students who participate in other extracurricular activities.

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Issue 15. Is There a Constitutional Right to Possess a Firearm for Private Use? 288

YES: **Antonin Scalia**, from Majority Opinion, *District of Columbia, et al., v. Dick Anthony Heller*, U.S. Supreme Court (June 26, 2008) 290

NO: **John Paul Stevens**, from Dissenting Opinion, *District of Columbia et al., v. Dick Anthony Heller*, U.S. Supreme Court (June 26, 2008) 300

Supreme Court Justice Antonin Scalia argues that the Second Amendment protects the right of a private citizen to own a handgun for self-defense.

Supreme Court Justice John Paul Stevens argues that a previous case, *United States v. Miller*, held that the Second Amendment did not protect the right of a private citizen to own a handgun for self-defense.

Issue 16. Are Blanket Prohibitions on Cross Burnings Unconstitutional? 311

YES: **Sandra Day O'Connor**, from Majority Opinion, *Virginia v. Black, et al.*, U.S. Supreme Court (April 7, 2003) 313

NO: **Clarence Thomas**, from Dissenting Opinion, *Virginia v. Black, et al.*, U.S. Supreme Court (April 7, 2003) 324

Supreme Court Justice Sandra Day O'Connor argues that a Virginia statute proscribing all forms of cross burning is unconstitutional because symbolic speech can only be prohibited when done with the intent to intimidate, and such an intent cannot be inferred solely from the type of symbolic speech used. Supreme Court Justice Clarence Thomas argues that the history and nature of cross burning in the United States inextricably links the act to threatening and menacing violence and that the intent to intimidate can therefore be inferred solely from the act of cross burning itself.

Issue 17. Should Same-Sex Couples Receive Constitutional Protection? 332

YES: **Margaret Marshall**, from Majority Opinion, *Goodridge, et al., v. Department of Public Health*, Massachusetts Supreme Judicial Court (2003) 334

NO: **Robert Cordy**, from Minority Opinion, *Goodridge, et al., v. Department of Public Health*, Massachusetts Supreme Judicial Court (2003) 342

Massachusetts Supreme Judicial Court Chief Justice Margaret Marshall rules that prohibiting same-sex couples from marrying causes hardship to a segment of the population for no rational reason. Massachusetts Supreme Judicial Court Justice Robert Cordy, in dissent, holds that a statute banning same-sex marriage is a valid exercise of the state's police power.

Issue 18. Should Children with Disabilities Be Provided with Extraordinary Care in Order to Attend Regular Classes in Public Schools? 350

YES: **John Paul Stevens**, from Majority Opinion, *Cedar Rapids Community School District v. Garret F.*, U.S. Supreme Court (March 3, 1999) 352

NO: **Clarence Thomas**, from Dissenting Opinion, *Cedar Rapids Community School District v. Garret F.*, U.S. Supreme Court (March 3, 1999) 357

Supreme Court Justice John Paul Stevens interprets the Individuals with Disabilities Education Act as requiring public school districts to provide students who have severe physical disabilities with individualized and continuous nursing services during school hours. Supreme Court Justice Clarence Thomas argues that such an interpretation will impose serious and unanticipated financial obligations on the states.

Issue 19. Do Race-Conscious Programs in Public University Admissions Policies Violate the Fourteenth Amendment's Guarantee of Equal Protection Under the Law? 362

YES: Clarence Thomas, from Dissenting Opinion, *Barbara Grutter v. Lee Bollinger et al.*, U.S. Supreme Court (June 23, 2003) 364

NO: Sandra Day O'Connor, from Majority Opinion, *Barbara Grutter v. Lee Bollinger et al.*, U.S. Supreme Court (June 23, 2003) 371

Supreme Court Justice Clarence Thomas argues that the University of Michigan Law School's admissions policy discriminates on the basis of race and is therefore in violation of the Fourteenth Amendment's equal protection clause. Supreme Court Justice Sandra Day O'Connor holds that the admissions policy of the University of Michigan Law School, which makes race one factor among many in the process of creating a diverse student body, does not violate the Constitution's guarantee of equal protection under the law.

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