

>> Case Briefing and Legal Study Tips

To gain the most from this textbook, you should learn how to study written material effectively. You can achieve effective study through use of the SQ3R method, a method widely taught by study-skills psychologists for learning textual material.

SQ3R stands for **survey, question, read, recite, and review**. As a study method, it has dramatically improved the grade-point averages of most students who have practiced it. It is based upon the concept that active study of written material improves memory and comprehension of information far better than passive reading. Unfortunately, many students have not recognized the difference between active study and mere passive reading.

Students often read a textbook chapter exactly as they would read a novel or a magazine article. They begin with the first sentence of the chapter and read straight through the material, pausing only to underline occasionally. This way of reading may be suitable for a novel, but it is quite inappropriate for a textbook. Psychologists insist that an active study method must begin with a **survey** of the material to be read. If you plan to spend two hours studying a 30-page chapter, take three to five minutes in the beginning and survey the chapter. First, read the bold-type section headings (each chapter of this book is divided into numbered sections). Second, read a sentence or two from the text of each section. The purpose of this survey is to familiarize you with the topics covered in the chapter. Fight the tendency to stop your surveying process in order to comprehend all of the concepts you are surveying. Comprehension is not the goal of surveying.

Following the survey of all the sections, go back to the beginning of the chapter: Ask yourself a **question** before reading each section. Ask it aloud, if possible, but silently if circumstances demand. The important thing is actually to “talk to yourself.” Normally, each section heading can easily be turned into a question. If the section heading reads *Stare Decisis*, ask yourself the question, “What does *stare decisis* mean?”

Only after asking a question are you finally ready to **read** a chapter section. In reading keep your question in mind. By so doing you will be reading for a purpose: To discover the answer to your question.

Upon finishing each section, stop and **recite** the answer to your question. As an example, at the end of the section on *stare decisis* say to yourself, “*Stare*

decisis refers to the legal tradition that a judge in a given case will follow the precedent established in similar cases decided by courts in the jurisdiction.” According to psychologists, to recite this way greatly aids memory. Recitation also lets you know whether or not you have understood the material just read.

The last step of the SQ3R method is **review**. When devoting two hours to the study of a chapter, take the final 15 minutes of the time to review the material. Review the questions taken from the headings of each chapter section and recite the answers to them, rereading material if necessary to answer accurately.

A CASE BRIEFING SYSTEM

While the SQ3R method may be used effectively to study any subject, the **case briefing system** is uniquely designed to aid in the study of court decisions. In studying law, students frequently write up case briefs of each decision they read. Whether you are required to write up every decision is up to your individual instructor. However, the case briefing system provides an excellent framework for comprehending complicated judicial reasoning processes, and you should brief cases whether required to do so or not.

To avoid getting lost in a maze of judicial terminology, you should ask yourself a standard set of questions about each case decision and read to discover the answers to these questions. These standard questions lie at the heart of the case briefing system. They are:

1. Who is the plaintiff and who is the defendant?
2. What are the facts of the case? (Who did what to whom? What is the behavior complained of?)
3. Did the plaintiff or the defendant win in the lower court(s), and which party is appealing? (All decisions in this textbook come from appellate courts.)
4. What was the legal issue or issues appealed?
5. Does the plaintiff or the defendant win on the appeal?
6. What rules of law and reasoning does the appellate court use in deciding the issue?

Here is an illustration of a written case brief. It is a brief of the first case in the textbook, which you can find in Chapter 3 Case 3.1. Before looking at the brief, you should now read that case. An important part of law requires you to learn new vocabulary. To understand the case you read, you need to know several new

terms. You can find the terms in the glossary of this textbook, but to make it easier, we will define several new terms for you:

appellant The losing party at the district court level.

appellee The prevailing party in the district court who is responding to the appellant.

appeal To ask a higher court to decide whether an inferior court (e.g. trial court) made a legal mistake in its decision; also to ask a higher court to review (decide) the case.

dissent To disagree both with the result and the legal reasoning of the majority opinion.

opinion The court's decision in a case.

petitioner The losing party in the court of appeals who asks (i.e. "petitions") the Supreme Court to decide whether the lower court made a mistake.

respondent The prevailing party in the court of appeals who is responding to the petitioner.

reversed What an appeals court says when it disagrees with the court beneath it. If it agrees with the lower court, it says "affirmed."

CASE BRIEF

Citizens United v. Federal Election Commission, 558 U.S. 50 (2010)

How do I read this citation?

- "Citizens United" refers to the *appellant**
- "v" means versus or against
- "Federal Election Commission" refers to the *appellee*
- 558 is the volume number of the official U.S. Supreme Court (U.S.) reporter and 50 indicates the page number where the case begins. 2010 is the year of this decision.

*Note that this case is somewhat unusual in that it is an appeal to the Supreme Court directly from the United States District Court for the District of Columbia. As such, the parties are called "appellant" and "appellee" (as opposed to "petitioner" and "respondent").

Plaintiff and Defendant The plaintiff/appellant is Citizens United, a nonprofit corporation. The defendant/appellee is the Federal Election Commission.

Facts *Citizens United v. Federal Election Commission* involves political speech and the First Amendment. The petitioner Citizens United is a nonprofit corporation with an annual budget of about \$12 million. In January 2008, it released the film *Hillary: The*

Movie (Hillary). The movie is a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. The film includes interviews with political commentators and others critical of Hillary Clinton. Citizens United wanted to release *Hillary* via video-on-demand to allow digital cable subscribers to watch the program at any time, including within 30 days of the 2008 primary elections. It also wanted to run ads to promote the film. The film was already released in theaters and on DVD, but Citizens United sought to increase distribution on cable. Because Citizens United was concerned that *Hillary* and the ads would be prohibited by the Bipartisan Campaign Reform Act of 2002 (BCRA), it commenced an action in the district court.

Lower Court Concerned about possible civil and criminal penalties for violating §441b of the BCRA, Citizens United sought declaratory and injunctive relief, arguing that (1) §441b is unconstitutional as applied to *Hillary*; and (2) that BCRA's disclaimer, disclosure, and reporting requirements (§§201 and 311) were unconstitutional as applied to *Hillary* and the ads. The U.S. District Court for the District of Columbia denied Citizens United a preliminary injunction and granted Federal Election Commission summary judgment.

Issue Appealed Citizens United asked the Supreme Court to address this question:

For the proper disposition of this case, should the Court overrule either or both *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and the part of *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), which addresses the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. §441b?

In essence, Citizens United argued that (1) §441b is unconstitutional as applied to *Hillary* and (2) that the BCRA's disclaimer and disclosure requirements are also unconstitutional as applied to *Hillary* and the ads promoting the movie.

Who Wins? From the majority opinion:

The judgment of the District Court is reversed with respect to the constitutionality of 2 U.S.C. §441b's restrictions on corporate independent expenditures. The judgment is affirmed with respect to BCRA's disclaimer and disclosure requirements. The case is remanded for further proceedings consistent with this opinion.

What Does This Mean? In a 5–4 decision, the Court overturned *Austin* and *McConnell*, declaring that the government may not ban political spending by corporations. As such, Citizens United would be able to broadcast *Hillary* without concerns about the proximity of the broadcast to the elections. The Court, however, upheld the disclaimer and disclosure requirements of the BCRA, requiring Citizens United to comply with this part of the law.

Reasoning

1. The Court held that §441b creates an unconstitutional burden on political speech, stating “the Government may not suppress political speech

based on the speaker’s corporate identity. No sufficient governmental interest justified limits on the political speech of nonprofit or for-profit corporations.” Thus, the First Amendment prevails.

2. The Court also held that because there was no showing that the disclaimer and disclosure requirements would “impose a chill on speech or expression,” those provisions of the BCRA should be upheld.