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Abington School District v. Schempp — Fugitive slaves

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from violent prisoners if he would describe the murder of the young girl. At Fulminante's trial for the murder, the prosecution used the account he gave to the informant in combination with other evidence, and Fulminante was found guilty of first-degree murder.

The justices agreed that the confession had been coerced and that it should have been excluded from the trial. Disagreeing on almost everything else, the justices issued two rulings. In regard to the central issue, Chief Justice William H. Rehnquist, speaking for a 5-4 majority, held that use of a coerced confession may be excused as a "harmless error" if other evidence is adequate to support a guilty verdict. Rehnquist argued that the Supreme Court had accepted harmless error analysis in regard to other "trial errors" just as detrimental to a defendant. Justice Byron R. White, speaking for a different 5-3 majority, ruled that the impact of Fulminante's confession had not been shown to be harmless beyond a reasonable doubt. This ruling meant that Fulminante was entitled to a new trial in which his confession would not be admitted.

Thomas T. Lewis

SEE ALSO *Brown v. Mississippi*; Due process, procedural; Exclusionary rule; Fifth Amendment; *Harris v. New York*; Self-incrimination, immunity against.

Arlington Heights v. Metropolitan Housing Development Corp.

CITATION: 429 U.S. 252

DATE: January 11, 1977

ISSUE: Racial discrimination by a governmental agency

SIGNIFICANCE: The Supreme Court reaffirmed the principle that a governmental policy will not be judged unconstitutional solely because it has a disproportionate impact on a particular race.

A nonprofit developer wanted to construct low- and moderate-income housing units in a largely white suburb of Chicago. A major goal of the project was to promote racial integration in the community. The suburb's board of trustees refused to rezone the region for multiple-family dwellings, thus killing the project. The federal court of appeals ruled that the denial of rezoning violated the Fourteenth Amendment because its "ultimate ef-

fect" was discrimination against racial minorities. By a 7-1 vote, the Supreme Court reversed the lower court's ruling. Based on the recent precedent, *Washington v. Davis* (1976), Justice Lewis F. Powell, Jr., explained that proof of a "racially discriminatory intent" was necessary in order to establish a constitutional violation. From the official minutes and other evidence of the case, Powell concluded that the challengers had "simply failed to carry their burden of showing that discriminatory purpose was a motivating factor in the Village's decision."

Thomas T. Lewis

SEE ALSO Equal protection clause; *Jones v. Alfred H. Mayer Co.*; Race and discrimination; *San Antonio Independent School District v. Rodriguez*; *Washington v. Davis*; Zoning.

Articles of Confederation

DATE: 1781

DESCRIPTION: First written blueprint for organizing a compact of the American colonies.

SIGNIFICANCE: The Articles of Confederation provided the first American system of government, although they did not create a judicial system. They also were a precursor to the Tenth Amendment.

Drafted in stages from 1776 to 1777 but not ratified until 1781, the Articles of Confederation extended and revised the existing understanding of diffused authority and state autonomy. Richard Henry Lee, Samuel Adams, John Dickinson, and Roger Sherman, among others, assisted in the drafting of the document. Although regarded in 1781 as a reliable constitution, the accepted modern view of the articles is that they were a dismal failure in all respects. The articles could not provide for a system of popular rule or supply the young regime with the security measures that were needed to ensure its survival. The critics of the articles usually cite the plan's inability to endow a national government with the power to levy taxes or regulate commerce, thereby discouraging all efforts at national cohesion. The articles, in other words, embodied the political tensions within American politics during the period between the signing of the Declaration of Independence and the Constitutional Convention.

The articles possessed the means for affirming popular rule, diffusing political authority, and allowing for a system of government. As in the case of the Declaration of Independence, the articles perpetuated the original design for the territorial division of the country, into independent and sovereign states, a "perpetual union." Article II described the nature of the alliance: "Each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by the Confederation expressly delegated to the United States in Congress assembled." Articles III and IV, antecedents of the Tenth Amendment, affirmed the nature of their "league of friendship" and provided for the extradition of fugitives. Article V presented a system of representation for the states in Congress that allowed for each state to have no less than two and no more than seven delegates. Articles VI and VII concerned limitations on the states regarding the conducting of foreign affairs and national security. Article VIII detailed how the costs of war would be defrayed and Article IX outlined the powers of Congress, the only branch of government established by the document. The last four articles discussed various aspects of the "perpetual" union.

The articles confirmed the centrality of the states, thus placing the relationship between the governed and the government at the state level instead of the national level. The articles also provided that the respective states, not the federal government, would protect citizens' privileges and immunities. As a genuine precursor to the Tenth Amendment (which reserved for the states or the people those powers not delegated to the United States by the Constitution), the articles limited the power of the federal government and strengthened state prerogatives.

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H. Lee Cheek, Jr.

SEE ALSO Constitution, U.S.; Constitutional Convention; Declaration of Independence; Federalism; State action; State constitutions; States' rights; Tenth Amendment.

Ashwander v. Tennessee Valley Authority

CITATION: 297 U.S. 288

DATE: February 17, 1936

ISSUE: Constitutionality of the Tennessee Valley Authority (TVA)

SIGNIFICANCE: The Supreme Court upheld the constitutionality of the TVA, including its right to sell electricity. In a concurring opinion, Justice Louis D. Brandeis formulated influential guidelines concerning when the Court will decide constitutional questions.

When the TVA sold "surplus power" to a private utility company, minority shareholders went to court to annul the agreement. Speaking for an 8-1 majority, Chief Justice Charles Evans Hughes argued that the TVA had been built for national defense and for the improvement of navigation, which were legitimate interests of the national government. He added that Article IV, section 3, of the U.S. Constitution authorized Congress to dispose of property legally acquired. Dissenting, Justice James C. McReynolds accused the majority of using a fictitious rationale, since the main purpose of the TVA was to produce and sell electricity.

Although concurring with the decision, Justice Brandeis argued that the Supreme Court should not have even addressed the constitutional question because the case involved only an internal dispute among shareholders. He codified rules for the Court to follow. First, the Court will not determine constitutional questions in a friendly, non-adversarial proceeding; second, the Court will not anticipate an issue of constitutional law; third, the Court will not decide a constitutional question unless necessary to resolving the case at hand; fourth, the Court will not formulate a principle of constitutional law broader than necessary for resolving the case; fifth, the Court will not decide on the validity of a statute unless a plaintiff has been injured by its operation; and sixth, before deciding that a statute is unconstitutional, the Court will first

SEE ALSO Commerce, regulation of; Common carriers; Interstate compacts; Judicial review; *Munn v. Illinois*; *National Labor Relations Board v. Jones and Laughlin Steel Corp.*; Progressivism; Sherman Antitrust Act; *Wabash, St. Louis, and Pacific Railway Co. v. Illinois*; *Wickard v. Filburn*.

Interstate compacts

DESCRIPTION: Contracts between two or more states binding them to certain specified provisions of an agreement.

SIGNIFICANCE: States may cooperate with each other through creation of interstate compacts. Enforcement and amendment of these compacts falls under the jurisdiction of the Supreme Court.

The U.S. Constitution provides for a federal governing system, with those powers not exercised by the federal government being retained by the states. According to Article I, section 10, of the Constitution, with the approval of Congress, states can enter into interstate compacts that involve such matters as water resources, navigation, pollution control, port development, or management of offenders of the law. Compacting states are bound to observe the terms of the agreements, even if the terms are inconsistent with other state laws. Because compacts have the force and effect of statutory law, they take precedence over any conflicting state laws.

In the late 1990's interstate compacts governing allocation and flow of water were targeted by environmentalists in order to protect western rivers and forests. An environmental group known as the Forest Guardians filed suit in the Supreme Court under the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act to force federal and state agencies to address environmental problems created by interstate compacts and bring the compacts into compliance with environmental laws. In addition, in the late 1990's, the U.S. Department of Justice pursued amendments to interstate compacts regarding the supervision of probationers, parolees, and fugitives from the law.

Alvin K. Benson

SEE ALSO Common carriers; Fugitives from justice; State action; States' rights; Tenth Amendment.

Iredell, James

IDENTIFICATION: Associate justice (May 12, 1790-October 20, 1799)

NOMINATED BY: George Washington

BORN: October 5, 1751, Lewes, England

DIED: October 20, 1799, Edenton, North Carolina

SIGNIFICANCE: Serving on the Supreme Court for nearly a decade, Iredell was a supporter of judicial restraint, a strict constructionist, and defender of the Constitution's original design.

Born in Lewes, England, Iredell spent his childhood in Bristol. The eldest of five sons born to Francis and Margaret McCulloh Iredell, he was forced to leave school after his father suffered a debilitating stroke in 1766. With the assistance of relatives, Iredell came to America in 1768 to accept an appointment as comptroller of the customs in Port Roanoke in Edenton, North Carolina. The young man's salary was sent directly to his parents. A gregarious person, Iredell quickly made friends, including many of the most talented citizens of Edenton. He began legal studies under the tutelage of Samuel Johnston, who would later serve as governor of North Carolina. Iredell also married Johnston's sister, Hannah, in 1773.

In 1770 Iredell was licensed to practice law in the lower courts of the colony, and in 1774 he was allowed to practice law in the superior courts. In 1774 he was also promoted to collector of the port at Edenton. During this period, Iredell published various tracts urging a healing of relations between England and America, while expressing concern about the violation of the colonists' chartered rights as Englishmen. With great precision and restraint, Iredell presented a series of thoughtful commentaries that served as a defense of the American position. The central problem of the English system, according to Iredell, was a weak judiciary, unable to defend the constitution against the usurpations of Parliament and the Crown.

Iredell was appointed to serve on a committee to revise the statutes of North Carolina in 1776 and elected by the general assembly to serve as a superior court judge, the equivalent of a state supreme court judicial post, in 1777. He served in this capacity for six months. After serving as North Carolina's attorney general, Iredell re-

turned to his law practice and continued to defend colonists' positions in his speeches and writings. By the time of the Constitutional Convention, Iredell was a highly respected jurist and legal theorist.

Iredell was elected as a delegate to North Carolina's first ratifying convention. Under the pseudonym "Marcus," Iredell had already published an essay entitled "Answers to Mr. Mason's Objections to the New Constitution," defending the Constitution as a moderate document that would correct the weaknesses of the Articles of Confederation. He was one of the most articulate and influential of the Federalist advocates of the Constitution; however, as Iredell had anticipated, the initial attempt at ratification failed. A second convention was held in November, 1789, and the Constitution was ratified. In defense of the Constitution, Iredell stated that "no power can be exercised but what is expressly given." For Iredell, the adoption of the Constitution was an improvement because it provided for a separation of powers and affirmed state sovereignty. His thoughtful defense of the need for ratification attracted many admirers, including President George Washington, who appointed Iredell to the Supreme Court in 1790.

As an associate justice, Iredell was an original thinker and representative of southern federalism. In his decisions and legal analysis, he differed substantially from his colleagues, including Chief Justice John Jay and Justice James Wilson. In the case of *Chisholm v. Georgia* (1793), the judiciary's first reevaluation of the federal arrangement after ratification, Iredell provided the lone dissent, arguing that a citizen of one state could not sue another state in federal court. The other justices claimed the plaintiff had a right to be heard. Iredell suggested that "each state in the Union is sovereign as to all powers reserved." In 1798 the states ratified the Eleventh Amendment, which overturned the *Chisholm* decision and affirmed Iredell's criticism of implied power and defense of state authority. As the first justice to articulate a strict constructionist view of the Constitution, Iredell was a representa-



James Iredell. (Albert Rosenthal/Collection of the Supreme Court of the United States)

tive of a school of interpretation that continues to influence judicial decision making.

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H. Lee Cheek, Jr.

SEE ALSO *Chisholm v. Georgia*; Constitutional Convention; Eleventh Amendment; Federalism.

concluded that the convictions should be overturned because the conditions specified in *Milligan* had not been satisfied. *Duncan*, like *Milligan*, speaks both of the permissibility of martial law and of the limits upon it. In both cases, however, the Court issued opinions only after hostilities were over.

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John E. Finn

SEE ALSO Civil War; *Duncan v. Kahanamoku*; *Habeas corpus*; *McCardle*, *Ex parte*; Military and the Court; *Milligan*, *Ex parte*; Presidential powers; War and civil liberties; War powers.

Martin, Luther

IDENTIFICATION: Founder, lawyer, and statesman
BORN: c. February 20, 1748, near New Brunswick, New Jersey

DIED: July 10, 1826, New York, New York

SIGNIFICANCE: As a delegate to the Constitutional Convention, Martin defended state sovereignty and the diffusion of political authority. He also earned a lasting reputation as a trial attorney arguing cases before the Supreme Court.

Martin was born in New Jersey to a family of modest means. He graduated with honors from the College of New Jersey (later Princeton University) in 1766. He spent several years teaching before presenting himself to be examined for admission to the Virginia bar. Martin passed the licensing examination and traveled to the western regions of Virginia, Maryland, and Pennsylvania, before starting a law practice on Maryland's eastern shore.

By 1774 Martin had become associated with efforts to declare independence. He was elected to the Committee of Observation in Somerset County and as a delegate to the Provincial Congress in



Luther Martin. (Archive Photos)

Annapolis. Martin, who had attracted the attention of the revolutionary leaders in Maryland, was also appointed as attorney general of the state in 1778, a post he would hold for twenty-seven years. He briefly fought in the Revolutionary War and continued to practice law. Martin was elected to the Confederation Congress in 1784, but his official responsibilities prevented him from attending.

When the Maryland legislature selected delegates to the Constitutional Convention, Martin was elected and accepted the appointment. He participated in the Convention from June 9, 1787, until September 4, departing from the gathering in protest with his fellow Maryland Antifederalist, John Francis Mercer. It is generally assumed that Martin was one of the authors of the New Jersey plan that strengthened the authority of Congress, while maintaining the system of representation contained in the Articles of Confederation. Martin's criticism of the Constitution and his participation in the Convention is frequently misunderstood. He believed that the Articles needed reform and was much more than a thwarter of change. According to Martin, the federal government's purpose was to protect the states. Moreover, Martin contributed

substantially to the development of the constitutional order that would emerge from the Convention, including the introduction of the electoral college. He explained his concerns about the Constitution to the Maryland delegation and to George Washington before departing from Philadelphia.

In 1788 Martin presented his objections to the Maryland legislature and published his comments as *The Genuine Information*. He supported inclusion of a bill of rights to protect the states and their citizens from the federal government. Elected as a delegate to the Maryland ratification convention in April, 1788, Martin was unable to participate in debate as the result of laryngitis.

After the adoption of the Bill of Rights in 1791, especially the Ninth and Tenth Amendments, Martin was more favorable toward the Constitution. As the result of his disdain for Thomas Jefferson, Martin became more sympathetic to the Federalist cause and was an outspoken critic of the Jefferson presidency. His successful handling of the defense of associate justice Samuel Chase's impeachment trial in the Senate (1805) and Aaron Burr's treason trial (1807) won Martin great respect and fame. Martin argued several cases before the Supreme Court, including *McCulloch v. Maryland* (1819). In *McCulloch*, Martin warned against the abuses of implied powers and suggested that a state could tax a federal bank. He lost the case but defended what he believed was a central feature of the Constitution. In August, 1819, Martin suffered a paralyzing stroke that prevented him from speaking. He would live for seven more years, spending his final years in the home of Aaron Burr.

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H. Lee Cheek, Jr.

SEE ALSO BURR, Aaron; Chase, Samuel; Constitutional Convention; Federalism; Impeachment of judges; *McCulloch v. Maryland*.

Martin v. Hunter's Lessee

CITATION: 1 Wheat. (14 U.S.) 304

DATE: March 20, 1816

ISSUE: Judicial federalism

SIGNIFICANCE: For the first time, the Supreme Court asserted its appellate jurisdiction to review decisions by state supreme courts.

During the American Revolution, Virginia confiscated the land estate of loyalist Lord Fairfax and sold it to private interests. Virginia also enacted a law denying the right of foreign subjects to inherit land in the state. Fairfax's English heir, Denny Martin, argued in court that the Virginia law was inconsistent with treaties between the United States and Britain. In *Fairfax's Devisee v. Hunter's Lessee* (1813), the Supreme Court ruled in favor of Martin. The high court of Virginia, headed by Spencer Roane, refused to honor the decision and declared that section 25 of the Judiciary Act of 1789, which authorized the Court's review of state court decisions, was an unconstitutional violation of Virginia's sovereignty. The case was returned to the Supreme Court, renamed as *Martin v. Hunter's Lessee*.

Speaking for a unanimous Court, Justice Joseph Story repeated the earlier decision, and his forty-page opinion on behalf of federal judicial review is considered a masterpiece. Story insisted that section 25 of the Judiciary Act was "supported by the letter and spirit of the Constitution." For the purposes of national union and uniformity, it was imperative for the Court to have the final authority to interpret treaties, federal statutes, and the Constitution. Story's landmark opinion strengthened national sovereignty and the supremacy of the federal judiciary. The major ideas of *Martin* were reaffirmed in several cases, especially *Cohens v. Virginia* (1821).

Thomas T. Lewis

SEE ALSO *Cohens v. Virginia*; *Fairfax's Devisee v. Hunter's Lessee*; Federalism; Judicial review; Judiciary Act of 1789; State courts; States' rights.

Martin v. Mott

CITATION: 25 U.S. 19

DATE: February 2, 1827

ISSUE: Presidential powers

SIGNIFICANCE: The Supreme Court, in the first of a

method. Departing from *Hoyt v. Florida* (1961), the Supreme Court found that the Sixth Amendment was violated by juries on which very few women (less than 15 percent of all jurors) were seated if the states excused or avoided seating women in various ways. *Hoyt* was not directly overturned because it was not decided on Sixth Amendment grounds. Chief Justice Warren E. Burger concurred, and Justice William H. Rehnquist dissented.

Richard L. Wilson

SEE ALSO Gender issues; *Hoyt v. Florida*; Jury, trial by; Jury composition and size; Sixth Amendment.

Tennessee v. Garner

CITATION: 471 U.S. 1

DATE: March 27, 1985

ISSUE: Use of force by the police

SIGNIFICANCE: The Supreme Court held that a police officer may use deadly force only when there is probable cause to believe that the suspect poses an immediate threat of death or physical harm to the officer or to others.

In 1974 a fifteen-year-old boy, Edward Garner, broke a window to enter an unoccupied house in Memphis, Tennessee. Two officers intercepted the suspect in the back of the house. By shining a flashlight, the officers were "reasonably sure" that the suspect was young and unarmed. When he was about to escape over a fence, one of the officers shot him in the back. The officer had acted in accordance with Tennessee's fleeing felon statute, which authorized all means necessary to stop a suspected felon. The decedent's father, nevertheless, won a damage award against the officers and the city.

By a 6-3 vote, the Supreme Court struck down the relevant portion of the Tennessee law. In the majority opinion, Justice Byron R. White wrote that apprehending a suspect "is a seizure subject to the reasonableness requirement of the Fourth Amendment." The majority found no reasonable justification for officers to use deadly force against a suspect who did not appear to be armed and dangerous. After the *Garner* decision was issued, half of the states had laws that were unconstitutional because of a lack of restraint on the use of force while attempting to arrest a nondangerous suspect.

Thomas T. Lewis

SEE ALSO Due process, procedural; Fourth Amendment; *Ker v. California*.

Tenth Amendment

DATE: 1791

DESCRIPTION: Amendment to the U.S. Constitution and part of the Bill of Rights that reserves for the states those powers not delegated to the federal government by the Constitution.

SIGNIFICANCE: The Supreme Court's decisions involving the Tenth Amendment were not always consistent. At times the amendment was criticized as redundant and at others reaffirmed as a valuable part of the Constitution.

The Tenth Amendment protects the reserved powers of the state, those not delegated to the federal government by the U.S. Constitution. The First Congress received numerous requests to include a means of protecting the reserved powers of the states. These concerns arose in many quarters during the Constitutional Convention of 1787 and ratification process, especially among the Antifederalists, who feared that an overbearing national government would assume the authority of the states. Article II of the Articles of Confederation had contained explicit provisions for protecting states, initiating a system whereby "each state retains its sovereignty." Various early state constitutions included provisions outlining the primacy of states in the confederal arrangement.

Federalists and Antifederalists. The most popular form of amendment requested during the state ratification conventions and proposed to the First Congress concerned a reserved powers clause. The defenders of the Constitution argued that such a provision was unnecessary. James Madison suggested in No. 39 of *The Federalist* (1788) that each state was "a sovereign body," bound only by its voluntary act of ratification. Other Federalists, including James Wilson, Alexander Hamilton, and John Marshall at the Virginia ratifying convention, held that such a proposal was already present in the Constitution and that the new government would only have the powers delegated to it.

Opposition to and suspicion of the proposed Constitution on the grounds that it would infringe on the privileged status of the states was widespread. The defenders of state authority viewed the

states as the repository of reserved power, and many believed that states were invested with an equal capacity to judge infractions against the federal government. In the Virginia ratifying convention, George Nicholas and Edmund Randolph, members of the committee reporting the instrument of ratification, noted that the Constitution would have only the powers "expressly" delegated to it. If Federalists disagreed with the stress on state authority, they generally viewed a reserved power clause as innocuous, and Madison included such a provision among the amendments he introduced in 1789.

In the First Congress, Elbridge Gerry, a Founder and Antifederalist elected to the House of Representatives, introduced a proposal reminiscent of the Articles of Confederation, leaving to the states all powers "not expressly delegated" to the federal government. Gerry's proposal was defeated, in part because of concerns about the similarity between the language of his amendment and that of the articles.

Others who took a states' rights or strict constructionist view of the Constitution, including Thomas Jefferson, persisted in defending state power. Before ratification of the Tenth Amendment, Jefferson advised President George Washington that incorporating a national bank was unconstitutional, basing his opinion on the amendment. Jefferson would later compose the Kentucky Resolutions, which defended the states as the sovereign building blocks of the American nation and noted that the states retained a means of protection when threatened. To describe the process of state action, Jefferson supplied a new term, nullification, to note the immediacy and severity of the "remedy" necessary to prohibit the federal government from absorbing state authority.

Defenders of the federal government, sometimes described as nationalists or loose constructionists, argued that Congress must assume more power if the needs of the country were to be met. Most prominent among the advocates of increased federal authority was Hamilton. For Hamilton, the Tenth Amendment was unnecessary as the political order already protected states. The Constitution, according to the nationalists, already contained provisions for the exercise of federal power, including the necessary and proper clause and supremacy clause.

TEXT OF THE TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Court and the Amendment. The Supreme Court addressed the controversy in *McCulloch v. Maryland* (1819). The Court upheld the constitutionality of a national bank, even though such an institution was not specified in the Constitution. In dismissing a strict delineation of state and federal authority, the Court, under the leadership of Marshall, extended the powers of Congress at the expense of the states. However, the Marshall Court also affirmed the notion that police powers belonged exclusively to the states. Under Chief Justice Roger Brooke Taney, the Court assumed more of a strict constructionist posture.

With the Civil War and Reconstruction, the authority and influence of the federal government were greatly increased. The role of the Tenth Amendment was essentially disregarded as federal troops occupied southern states and Congress provided governance. The authority of the states continued to suffer, resulting in part from a series of Court decisions in the twentieth century. In *Champion v. Ames* (1903), the Court affirmed a congressional act that prohibited the sale of lottery tickets across state lines as an effort to limit gambling. Before *Champion*, decisions regarding gambling were made by the states. The decisions of the Court were not consistent, and it soon adopted a view of the relationship between states and the federal government that allowed each to be authoritative in its own sphere, exempting "state instrumentalities" from federal taxation. In *Hammer v. Dagenhart* (1918), the Court ruled in favor of state power in terms of commerce. The Tenth Amendment would, however, suffer its most severe criticism in *United States v. Darby Lumber Co.* (1941). In this decision, Chief Justice Stone discredited the amendment as "redundant" and a "constitutional tranquilizer and empty declaration."

Although Stone dismissed the amendment, continued authentication of its importance can be

seen in *Fry v. United States* (1975), in which the Court affirmed that the amendment "expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." In *Printz v. United States* (1997), the Court again forcefully affirmed the amendment, noting that the amendment made express the residual state sovereignty that was implicit in the Constitution's conferring of specific governmental powers to Congress.

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H. Lee Cheek, Jr.

SEE ALSO Articles of Confederation; Bill of Rights; *Champion v. Ames*; Constitutional amendment process; Constitutional Convention; *Darby Lumber Co.*,

United States v.; Democracy; Federalism; *Federalist*, *The*; *McCulloch v. Maryland*; *Printz v. United States*; State action; States' rights.

Terminiello v. Chicago

CITATION: 337 U.S. 1

DATE: May 16, 1949

ISSUES: Freedom of speech; freedom of assembly

SIGNIFICANCE: The Supreme Court strengthened freedom of speech rights when speakers draw hostile opposition.

Justice William O. Douglas wrote the opinion for the 5-4 majority, overturning the conviction of a profascist, anti-Semitic priest named Terminiello who spoke to a sympathetic audience while a hostile crowd gathered outside. Terminiello was arrested for disturbing the peace. The local court convicted him by simply finding that his speech made the audience outside the hall angry. The Supreme Court found that the fact that his speech had angered a group was inadequate grounds for a conviction because it did not show that the speaker incited actions that were a clear and present danger. The case featured strong dissents by Chief Justice Fred M. Vinson and Justices Felix Frankfurter and Robert H. Jackson, who argued that the case should have followed the fighting words limitation set out in *Chaplinsky v. New Hampshire* (1942). The strength of the dissents is significant because the Court's 5-4 majority evaporated in similar cases such as *Feiner v. New York* (1951).

Richard L. Wilson

SEE ALSO Assembly and association, freedom of; Bad tendency test; *Brandenburg v. Ohio*; *Chaplinsky v. New Hampshire*; Clear and present danger test; *Feiner v. New York*; *Gillow v. New York*; *Schenck v. United States*; Speech and press, freedom of; *Whitney v. California*.

Territories and new states

DESCRIPTION: Land belonging to the United States that has not become a state and defined areas that just gained statehood.

SIGNIFICANCE: The addition of new territory and the creation of new states, authorized by the U.S. Constitution, increased the jurisdiction of the Supreme Court and brought varied and complex issues before it.