

THE GLOBAL REFUGEE CRISIS



People crossing the Simon Bolivar Bridge from Venezuela into neighboring Colombia in 2019. Some intended to gather supplies and return to Venezuela, while many others were refugees fleeing Venezuela.

*no one leaves home
unless home is the mouth of a shark
you only run from the border
when you see the whole city running as well*

- From the poem "Home" by
British Somali poet Warsan Shire

“Home” is a poem about the unthinkable hardships of the refugee experience. *Refugees* are people forced to flee their homes because they fear persecution by their government, human rights violations, or other threats against their lives. Many refugees leave their countries to apply for *asylum*, or protection, in foreign countries. Those who leave their countries for other reasons, like seeking better economic opportunities, are not considered refugees under international law. Instead, they are referred to as *migrants*.

On May 23, 2022, the United Nations (UN) High Commissioner for Refugees announced that the total refugees worldwide exceeded 100 million for the first time ever. This is a global crisis.

Many refugees are displaced people within their own countries, often because of civil war. These refugees are called internally displaced persons (IDPs). In 2022, over 50 million of the world’s refugees are IDPs. Forty-two percent of refugees are children.

World War II and Displaced Persons

Before World War II, many Jews attempted to escape Nazi Germany where they and other minorities were persecuted by the government. But other countries, including the United States, often denied them visas. During the war, millions of Europeans were forcibly displaced from their homes, and six million European Jews were killed by the Nazis in a genocide called the Holocaust.

After World War II, millions of people called “displaced persons” fled Europe. Most of these people had lost their homes, family members, and even proof of national citizenship.

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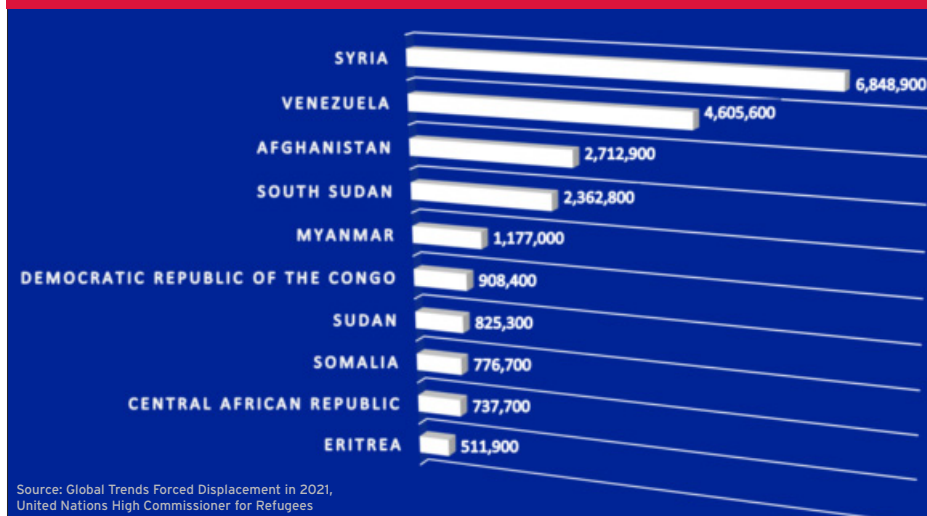
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**SPECIAL
NOTICE**

Number of people displaced across borders by country of origin, 2021



However, there is no UN enforcement of the Refugee Convention and Protocol. The whole asylum process depends on the cooperation of nations that have agreed to the Convention and Protocol. They are under no obligation to accept refugees convicted of serious crimes, or those suspected of being terrorists or war criminals.

Those nations that have agreed to the Refugee Convention and Protocol must have a procedure to fairly decide if a refugee is qualified for asylum. This usually involves court hearings, a process that can take months or years.

Once a refugee is granted asylum, the nation receiving the refugee is obligated to help with resettlement. Local governments and private groups like churches often sponsor refugee resettlement.

Examples of Refugee Crises

Some recent examples of the global refugee crisis are described below.

1. The Syrian Civil War

The Assad family has ruled the Muslim-majority nation of Syria for decades. In 2011, Syrian students began protesting the harsh and corrupt dictatorship led by President Bashar Assad. He used military force to suppress the protesters. Soon the conflict exploded into civil war, with various rebel groups fighting the Assad regime.

As of this writing, the civil war continues. The United States and Saudi Arabia have funded and armed rebel groups. Iran has provided strategic and financial assistance to Assad's forces. And the Russian air force and navy have used bombs and missiles, sometimes destroying entire rebel-held cities, and to date causing as many as 23,000 civilian deaths. The Assad regime has been accused by the UN and other international organizations of using chemical weapons, which are illegal under international law.

Millions of civilian refugees have left Syria, at first to neighboring countries, especially Jordan and Lebanon. There, Syrians face poor conditions either living in refugee camps (Lebanon) or in resource-strapped cities (Jordan). Starting in 2015, many Syrians attempted the dangerous crossing of the Mediterranean Sea to reach Europe. Thousands of men, women, and children in flimsy boats have drowned in the process.

The reception of Syrian refugees seeking asylum in Europe has been mixed. At first, Germany adopted a welcoming policy and accepted over half a million refugees, more than any other European nation. But later, some Germans reacted against the refugees.

The Criteria for Refugee Asylum Under International Law

In 1945, the newly founded United Nations began to address the problem of displaced persons caused by the war. In 1951, most nations signed the Convention Relating to the Status of Refugees. For the first time, international law defined the criteria for refugees qualifying for asylum:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, unwilling to return to it.

This original Convention was designed mainly for the protection of European displaced persons after World War II. The United States was not one of the signers of this Convention. But under its own Displaced Persons Act of 1948, the United States accepted 350,000 displaced persons from Europe until the act expired in 1952.

In 1967, the UN adopted the Refugee Convention and Protocol that applied the criteria for refugees seeking asylum to the rest of the world. The U.S. has signed on to this Protocol.

The Refugee Convention and Protocol includes principles for nations to protect asylum seekers and assure their safety. For example, refugees without proper documentation should not be returned to their home country if they would be subjected to persecution or their lives threatened because of race, religion, nationality, membership in a social group, or political opinion. In addition, refugees without documents who enter a country illegally should not be deported if they present themselves immediately to immigration authorities and show cause for their illegal entry.

Other countries like Hungary built walls to keep the refugees out. President Donald Trump ordered a ban on refugees from Syria and certain other countries, claiming to be barring terrorists. By mid-2021, around 5.6 million Syrian refugees had fled their country, and close to seven million were IDPs within Syria.

2. The Maduro Regime in Venezuela

Upon the death of Venezuelan President Hugo Chavez in 2013, his vice president Nicolas Maduro was elected president. Maduro continued Chavez's socialist economy and authoritarian governance. The South American nation has suffered an economic collapse with massive food and medicine shortages. Extreme poverty and starvation have caused widespread suffering.

Maduro has been widely accused of using rigged elections to stay in power. He has used his military to violently suppress protests and has jailed political opponents. The United States government does not recognize Maduro as president of Venezuela, though the United Nations does.

Large numbers of Venezuelans have fled the country, seeking asylum in neighboring countries and the United States. The UN has estimated that over four million Venezuelan refugees have fled Venezuela since 2014. Over 1.8 million of them currently live in Colombia, which the UN High Commissioner for Refugees estimates has its own IDP population of almost 8.5 million people.

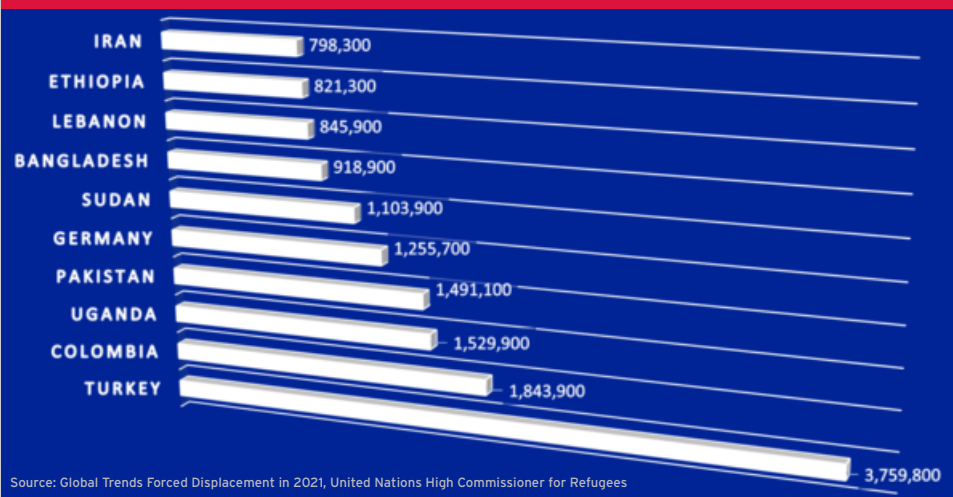
3. Wars and the Taliban in Afghanistan

The Soviet Union (now Russia) invaded and occupied Afghanistan between 1979 to 1992. U.S.-backed Afghan resistance finally drove the Soviets out of the country. But then a civil war erupted with extremist Taliban forces taking over the predominantly Muslim country.

The Taliban imposed severe religious rules on the Afghans. The Taliban also harbored Osama bin Laden, the mastermind of the 9/11 attacks. The U.S. then invaded Afghanistan in 2001 to capture or kill bin Laden, who escaped into neighboring Pakistan. In the years following the invasion, the U.S. helped replace Taliban rule with an elected Afghan government.

The Taliban launched an insurgency (armed rebellion) against the U.S.-backed Afghan government and the thousands of U.S. forces still in the country. In 2020, the U.S. and Taliban reached an agreement for U.S. withdrawal. The Afghan government finally collapsed when the U.S. left Afghanistan in 2021. The Taliban returned to power.

Number of people displaced across borders by host country, 2021



Years of warfare and Taliban rule drove many Afghans to seek asylum. By the end of 2021, the UN estimated that 2.6 million Afghans had been displaced outside their country, and 3.5 million were IDPs. In the year since the U.S. withdrawal, more than 68,000 Afghan refugees resettled in the United States, with several thousand more in the resettlement process.

4. Ethnic Atrocities in South Sudan

South Sudan, a landlocked country in central Africa, has a turbulent history. Before achieving independence from Sudan in 2011, the area experienced two civil wars, resulting in 2.5 million killed and millions more displaced inside and outside the country. Much of the violence has been among numerous ethnic groups competing for political power and control over the country's oil reserves.

After independence, a new civil war erupted between the South Sudan government and rebels. The government army's atrocities (extremely cruel acts) against rebels included the burning of villages, raping of women and girls, and killing of civilians. But in 2017, the UN Commission on Human Rights in Sudan blamed all sides for "gross human rights violations."

An uncertain peace agreement was reached in 2020. An estimated 400,000 people had been killed in this civil war. In mid-2021, the UN reported that there were over four million displaced South Sudanese persons, 2.5 million of whom were refugees seeking asylum in neighboring countries.

5. The Persecution of the Rohingya in Myanmar

Myanmar (once known as Burma) in Southeast Asia has a long history of discrimination and violence against the Rohingya Muslim minority (four percent of population) by the Buddhist majority. The Buddhist-dominated government and army have deprived the Rohingya of full citizenship, confiscated their property, and forced their labor.

In recent years, the Myanmar army has committed numerous atrocities such as mass killings, rape, torture,

and burning the homes of the Rohingya people. Thousands of them have been held in detention camps under poor conditions.

The Rohingya have lived in Myanmar for generations but have fled the country in large numbers, especially since 2017. Many have sought asylum in Bangladesh, where they mostly live in refugee camps. In mid-2021, the UN identified over one million displaced Rohingya living outside Myanmar.

A military takeover replaced the Myanmar civilian government in 2021. But the atrocities against the Rohingya have continued. In March 2022, the U.S. determined that the Myanmar military was engaged in a systematic policy of genocide of the Rohingya people.

6. Russian Invasion of Ukraine

Russian President Vladimir Putin ordered the Russian military to invade neighboring Ukraine in February 2022. Putin stated various justifications for his invasion, but many believe Putin's actual goal was to reestablish 17th century Russian emperor Peter the Great's empire, which included lands in present-day Ukraine.

The Russian military quickly adopted the same tactics they had used in Syria: bombing apartment buildings, schools, hospitals, and other civilian targets. The International Criminal Court has compiled evidence of these and other Russian atrocities.

The total number of Ukrainian civilian deaths is yet unknown, but the UN in mid-2022 documented about 4,000 killed.

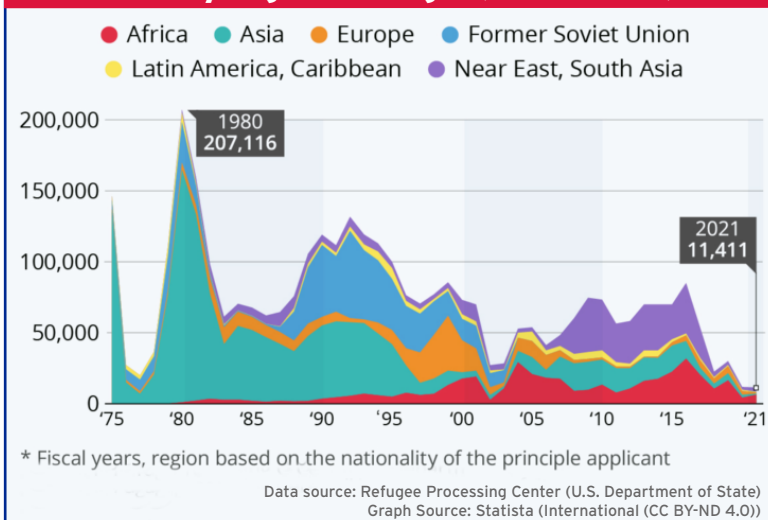
Many nations, including the United States, have condemned President Putin and Russia's invasion. Several nations have called Russia's actions war crimes and even genocide intended to destroy the Ukrainian people. By June 2022, the U.S. has supplied over \$50 billion in military and humanitarian aid to Ukraine.

According to the UN in mid-2022, over seven million Ukrainians had been internally displaced. In addition, at least 4.8 million refugees had been registered for asylum in dozens of countries, especially neighboring Poland and Hungary. These refugees have been mostly women and children. Men aged 18 to 60 were barred from leaving Ukraine so they could fight the Russians. Putin's war in Ukraine is causing the greatest refugee crisis in Europe since World War II.

Refugees and the United States

The Refugee Act of 1981 made the federal government responsible for deciding refugee asylum admissions. The official asylum screening process can take several years. The process usually starts outside the U.S. when an individual registers with the UN refugee agency that determines if he or she meets the criteria for asylum under the Refugee Convention and Protocol.

Number of individuals granted asylum in the U.S. by region of origin (1975-2021)



Those referred to asylum in the U.S. then undergo multiple interviews and security checks by U.S. officials. They take classes on American society and receive an assignment to a sponsoring American agency to help with resettlement. All this takes place before the asylum applicant is admitted to the U.S. where resettlement takes place. After five years, a refugee may apply for naturalized American citizenship.

Refugee annual quotas are set by the president and Congress. About three million refugees have been resettled in the U.S. since 1980, more than any other nation. Resettlement provides for more than asylum: resettled refugees may apply for permanent residency or even citizenship.

Undocumented Asylum Seekers

In recent decades, hundreds of thousands of men, women, and children have arrived at U.S. official entry posts along the U.S.-Mexican border without any asylum documentation. Many who illegally cross the border into the U.S. surrender to the U.S. Border Patrol. Those who attempt to avoid capture are deported when caught.

These undocumented migrants have been driven to leave their homes in Central American countries by widespread gang violence, extreme poverty, and the effects of devastating hurricanes. These people often claim asylum when they reach the United States. The practice of the Refugee Convention and Protocol is that these undocumented persons should nevertheless be processed for asylum if they show fear of persecution, which would then be determined by a U.S. immigration judge.

Past standard practice required undocumented asylum seekers at the southern U.S. border to make an argument for their case. They were then released to family members or other sponsors in the U.S. while they awaited a court date before a judge.

In recent years, the number of people encountered by border officers has been overwhelming, often over

10,000 a day. This has led to extraordinary measures taken by several presidents. Some of the undocumented were detained in camps. For a while, President Donald Trump ordered detained children and parents to be separated.

In 2019, President Trump reached an agreement with the government of Mexico known as “Remain in Mexico.” The agreement required Mexico to hold undocumented asylum seekers in their country while they waited for a hearing for their cases in U.S. courts. The backlog of cases, however, takes months if not years to be heard. Meanwhile, the asylum seekers often live in impoverished conditions subject to violence and kidnapping.

The pandemic also had an impact on asylum seekers. In 2020, the Trump administration activated a public health law, called Title 42. This allowed for the quick expulsion of most unauthorized border crossers and asylum seekers on the grounds of preventing the spread of COVID-19. This law prevents undocumented migrants from applying for asylum. Instead, they are expelled to the most recent country they travelled through (usually Mexico) or to their country of origin.

By December 2021, there was already a backlog of 1.6 million asylum cases. In June 2022, the U.S. Supreme Court ruled in favor of President Biden’s challenge to the “Remain in Mexico” policy. The court allowed Biden to end the program. The Department of Homeland Security announced, however, that it would continue to enforce Title 42.

Even with these restrictions in place, President Biden announced speeding the acceptance of 100,000 Ukrainian refugees to the United States. This led to accusations that the U.S. discriminates against refugees based on race and ethnicity, limiting refugees from non-European countries and regions in favor of those from Europe.

What do Americans think about accepting refugees seeking asylum in the U.S.? In 2018, the Pew Research Center found that 51 percent of Americans say the U.S. “has a responsibility to accept refugees into the country,” while 43 percent say it does not.

WRITING & DISCUSSION

1. Which one of the six refugee crisis examples do you think should get the most attention and aid from the U.S.? Why?
2. Do you think the “Remain in Mexico” and “Title 42” programs violate the principles of the Refugee Convention and Protocol? Why or why not?
3. Consider the role of the United States as a global superpower and especially its role in the conflicts described in the article. Should the U.S. limit the number of asylum requests it grants? Why or why not?

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ACTIVITY: Climate Refugees

Climate change resulting from global warming is having a severe impact on the refugee crisis. Millions of people have already been displaced due to drought, famine, rising sea levels, and intense storms caused by climate change. The World Bank estimates that by 2050, more than 143 million people on earth will be internally displaced in their countries due to climate issues. Tens of millions more will leave their countries.

One current example is Syria. For decades before the Syrian civil war, rising temperatures and lack of rainfall turned much of Syria’s agricultural land into desert. Hundreds of thousands of farmers lost income, and many were internally displaced. As Syria had to import its grain, food prices skyrocketed. This dire situation not only helped bring about unrest leading to the civil war, but it also has compelled millions of Syrians to become refugees.

Under international law, however, people fleeing climate change are known as “climate migrants,” not “refugees.” If they were considered refugees, they would have greater ability to legally seek asylum in other countries. The United Nations Human Rights Council (UNHCR) has begun to recognize climate refugees, but the UNHCR’s decisions are not law that UN nations must follow.

With a partner, answer the following key question:

Should the UN Convention Relating to the Status of Refugees protect people displaced because of climate change?

To answer the question, you and your partner should:

- Review the UN Convention Relating to the Status of Refugees. What refugee situations does it cover?
- Review the refugee examples described in the article. How do the circumstances of climate migrants compare to at least two of those examples?

Be ready to share your decision and your reasons with the class.

Assessment: Write a complete paragraph answering the key question.

SUPREME COURT HIGHLIGHTS

Each year, the Supreme Court of the United States receives 7,000 to 8,000 petitions for appeals. Each petition seeks Supreme Court review of a case and is called a “writ of certiorari.” The Supreme Court must decide to *grant cert.*, as it’s called, or *deny cert.* for each petition. Given the volume of appeals, the chances of any case making it to the Supreme Court are extremely slim: the court typically hears oral argument in about 80 cases and resolves about 100 more cases without oral argument.

In its 2021-2022 term, the Supreme Court issued 66 opinions. Some of these are already landmark cases, indicating major shifts in the law of the land. *Bill of Rights in Action* (BRIA) is proud to bring its readers this new feature: “Supreme Court Highlights.” Here, each year, we will present a few of these landmarks and other notable cases that the Supreme Court heard in its previous term.

For many years, BRIA provided these highlights, so this is really a revived feature: revived and improved! Here we will provide:

- summaries of select, significant cases from each term of the Supreme Court of the United States,
- noteworthy quotes from the majority opinion and (if applicable) concurring or dissenting opinions, and
- questions for use in writing or discussion in a U.S. government, U.S. history, or civics class.

Selected cases from the 2021-2022 U.S. Supreme Court term are listed below.

Dobbs v. Jackson Women’s Health Organization

A Mississippi law passed in 2018 banned almost all abortions after 15 weeks into a woman’s pregnancy. The Jackson Women’s Health Clinic sued Mississippi Secretary of State Thomas E. Dobbs to stop enforcement of the law. The clinic argued that the law itself was unconstitutional under another Supreme Court case, *Planned Parenthood v. Casey* (1993).

In the *Casey* case, the Supreme Court held that abortions generally could not be banned within 24 weeks into a woman’s pregnancy. Such bans were an undue burden on a woman’s right to abortion, which had been established by the precedential case of *Roe v. Wade* (1973).

Both *Roe* and *Casey* based the right to abortion on the right to privacy, which the Supreme Court interpreted as part of the due process of law clause of the 14th Amendment to the U.S. Constitution. The due process clause says that no state in the United States “shall . . . deprive any person of life, liberty, or property, without due process of law.” The court in *Roe v. Wade* interpreted “liberty” as protecting the right to privacy, which *Roe* and *Casey* held encompasses a woman’s right to choose to have an abortion.

In the *Dobbs* case, six of the Supreme Court justices held that the Mississippi 15-week ban on abortions was constitutional. Five of the justices also voted to overturn *Roe* and *Casey*, deciding that the right to privacy does not extend to a woman’s right to choose to have an abortion. Instead, the court concluded that abortion access should be determined by elected legislatures — and not courts — at the state level and in Congress, which would be influenced by the voting public.



Pro-life and pro-choice protesters in front of the U.S. Supreme Court while the *Dobbs* case was argued.

From the majority opinion:

Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division. . . .

What sharply distinguishes the abortion right from [other rights such as the right to contraception and the right to marry someone of a different race] is something that both [the *Roe* and *Casey*] decisions acknowledged: Abortion destroys what those decisions call ‘potential life’ and what the law at issue in this case regards as the life of an ‘unborn human being’.

From the dissenting opinion:

One result of today’s decision is certain: the curtailment of women’s rights, and of their status as free

and equal citizens. Yesterday, the Constitution guaranteed that a woman confronted with an unplanned pregnancy could (within reasonable limits) make her own decision about whether to bear a child, with all the life-transforming consequences that act involves. . . . But no longer.

WRITING & DISCUSSION

- Based on what you know about history and Constitution and Bill of Rights, do you think there is a right to privacy in the due process clause of the 14th Amendment? Why or why not?

- In *Dobbs*, the Supreme Court held that “the authority to regulate abortion” is with “the people and their elected representatives.” This means that state legislatures or Congress (the national legislature) will regulate this issue, and not the courts. What are the implications of this decision for citizens who have opinions about this issue (pro-life or pro-choice)?

Text of the decision:

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

Kennedy v. Bremerton

Joseph Kennedy was a high school football coach in Bremerton, Washington. After games, he would kneel midfield and quietly pray by himself for about 30 seconds. He prayed while he was still on coaching duty, and although players from both teams would sometimes join in on the prayers, Kennedy was not encouraging or leading football players or anyone else in his prayers. He said his prayers were to give thanks for “what the players had accomplished.”

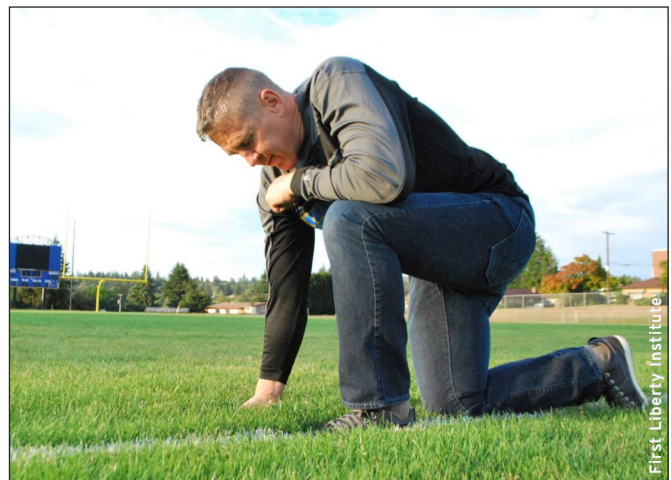
The school district feared being sued by some parents for violating the First Amendment’s establishment clause. It was concerned that its employee’s visible prayer activity might give the impression that the school district endorsed his religious beliefs. The district told Kennedy that his prayers needed to be non-demonstrative (so no one could tell he was praying) or out of sight of students.

Kennedy continued his quiet after-game prayers on the football field. He also spoke to local media about his plans to pray, which increased the attention that his post-game prayers received. The district ultimately placed him on administrative leave. He sued the district.

In a 6-3 opinion, the Supreme Court held that Kennedy’s prayers were personal religious observances and were protected conduct under the First Amendment’s free exercise and free speech clauses.

From the majority opinion:

Here, a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination.



Former Bremerton High School football coach Joe Kennedy demonstrating how he prayed on the football field after games.

From the dissenting opinion:

Today, the Court . . . elevates one individual’s interest in personal religious exercise, in the exact time and place of that individual’s choosing, over society’s interest in protecting the separation between church and state, eroding the protections for religious liberty for all. In doing so, the Court sets us further down a perilous path in forcing States to entangle themselves with religion, with all of our rights hanging in the balance.

WRITING & DISCUSSION

- Do you agree that Kennedy’s prayers were “personal religious observances”? Why or why not?
- Imagine Kennedy had invited players and parents to silently pray with him at the 50-yard line. Would the majority opinion be the same? Why or why not?

Text of the case:

https://www.supremecourt.gov/opinions/21pdf/21-418_new_onkq.pdf

New York State Rifle & Pistol Association, Inc. v. Bruen

In 1911, in response to rampant violent crime, New York created a law requiring individuals who wanted to carry concealed firearms in public to show they had a special need for self-protection. The New York State Rifle & Pistol Association (NYSRPA) is a gunowners' advocacy group in New York. When they were denied an unrestricted license to carry a concealed firearm in public in 2014, two individual gunowners in New York, Robert Nash and Brandon Koch, challenged this law. They were joined by the NYSRPA in their challenge.

The state argued that Nash and Koch failed to show any special need for self-defense. Nash and Koch argued they were law-abiding citizens and that the state's requirement that they show a special need for self-protection violates their Second Amendment right to keep and bear arms.

The Second Amendment states:

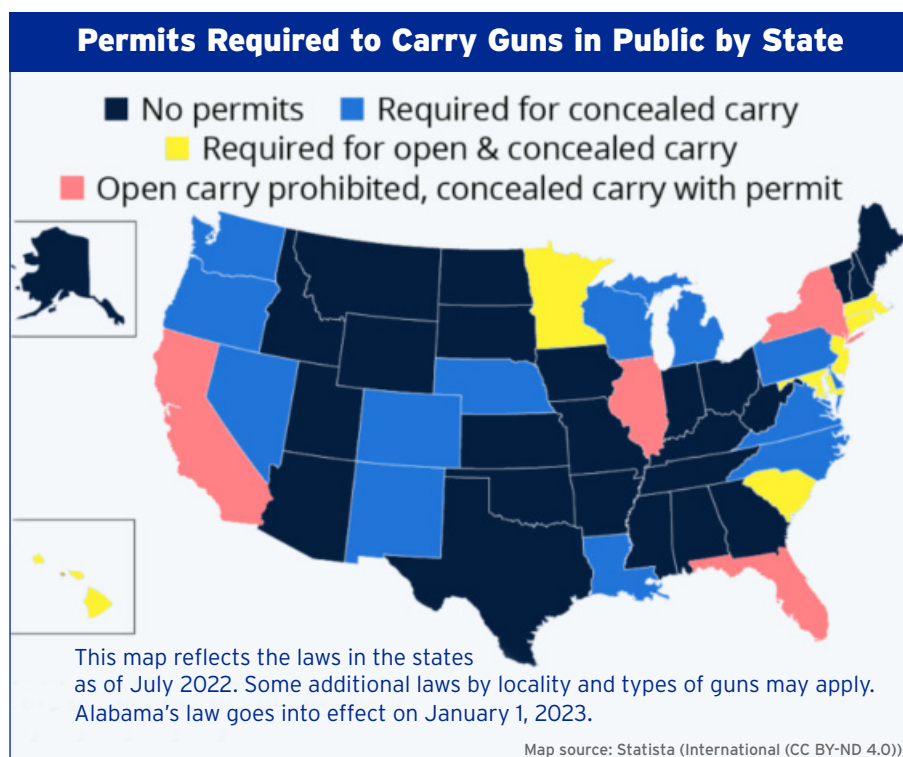
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The question before the Supreme Court was: Does New York's denial of these applications for a concealed-carry license for self-defense violate the Second Amendment?

In a 6-3 opinion, the Supreme Court held that New York's law violated individuals' Second Amendment right to keep and bear arms in public for self-defense. However, the court did not dispose of all state-level firearm regulations. The court stated that settled law would allow for regulations prohibiting firearms in "sensitive places." Some historical examples of such places include legislative assemblies, polling places, and courthouses.

From the majority opinion:

The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.' [Quoting a prior case.] We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment



works when it comes to public carry for self-defense.

From the dissenting opinion:

New York's Legislature considered the empirical evidence about gun violence and adopted a reasonable licensing law to regulate the concealed carriage of handguns in order to keep the people of New York safe. It gives the State no opportunity to present evidence justifying its reasons for adopting the law or showing how the law actually operates in practice, and it does not so much as acknowledge these important considerations. Because I cannot agree with the Court's decision. . . without considering the State's compelling interest in preventing gun violence and protecting the safety of its citizens, and without considering the potentially deadly consequences of its decision, I respectfully dissent.

WRITING & DISCUSSION

- Do states have an interest in regulating when and where firearms can be carried in public?
- The *Heller* case in 2008 established that the right to keep and bear arms in the home for self-defense is a fundamental right. Should individuals who are convicted of serious crimes forfeit the right to carry firearms? Why or why not?

Text of the case:

https://www.supremecourt.gov/DocketPDF/20/20-843/184092/20210716114003059_2021.07.16%20NYSRPA%20v.%20Bruen.pdf

Shinn v. Ramirez

After being convicted of capital offenses, David Ramirez and Barry Jones were sentenced to death by an Arizona state court following a separate sentencing trial in front of the same jury. (When defendants are convicted in capital (death penalty) cases, a separate trial is conducted to determine whether they should be sentenced to death or not.) Both defendants appealed their convictions and sentences and lost in the state court of appeals. The whole process of appealing a conviction is known as the *postconviction* process. Hearings in front of appeals (or *appellate*) courts are known as *postconviction proceedings*.

After losing their state-level appeals, both Ramirez and Jones filed a *writ of habeas corpus* in federal court. This writ is a petition to the federal government in which incarcerated people argue that their state imprisonment is illegal.

In their appeal to the federal court, Ramirez and Jones argued that their imprisonment was illegal because their counsel (lawyers) at trial had been ineffective. They argued that their lawyers did not conduct adequate investigations to defend them at their convictions and sentencing.

Ramirez's and Jones's new lawyers in the federal case used evidence that had not been introduced at their state trials. There was evidence that Ramirez had a mental disability that his trial counsel had failed to reveal. There was also forensic evidence suggesting that Jones was innocent of the crime.

The federal appeals court ruled in favor of Ramirez and Jones on their *habeas corpus* petitions. The appellate court relied on the 2012 Supreme Court decision in *Martinez v. Ryan*, which allowed prisoners to use postconviction counsel's ineffectiveness as a reason to overcome *procedural default* (failing to make the claim of ineffectiveness at the state-court level). The State of Arizona appealed to the U.S. Supreme Court.

In a 6-3 opinion, the Supreme Court held that federal courts may only grant habeas relief if a trial court violated proper state procedures in finding someone guilty. And the Supreme Court held that a defendant claiming ineffective assistance of counsel in a state postconviction proceeding may not introduce evidence beyond what was introduced in the state trial court. The Supreme Court explained that federal *habeas corpus* relief is "extraordinary" and is only available in the case of "extreme" failures by state counsel, which the Supreme Court determined was not the case here. Thus, new evidence cannot be considered in federal court even if trial counsel provided ineffective representation at the state court level.



From the majority opinion:

A prisoner 'bears the risk in federal habeas for all attorney errors made in the course of the representation,' unless counsel provides 'constitutionally ineffective' assistance. [Quoting prior cases.] And, because there is no constitutional right to counsel in state postconviction proceedings, a prisoner must ordinarily 'bear responsibility' for all attorney errors during those proceedings. Among those errors, a state prisoner is responsible for counsel's negligent failure to develop the state postconviction record.

From the dissenting opinion:

The Sixth Amendment guarantees criminal defendants the right to the effective assistance of counsel at trial. . . . Today . . . the Court hamstring[s] the federal courts' authority to safeguard that right. The Court's decision will leave many people who were convicted in violation of the Sixth Amendment to face incarceration or even execution without any meaningful chance to vindicate their right to counsel.

WRITING & DISCUSSION

- Do you think the federal government should allow new evidence on appeal that was not originally produced in state court post-conviction proceedings? Why or why not?
- Do you agree with the dissenting opinion that the majority's decision that there is no right to effective assistance of counsel in post-conviction proceedings may prevent people from their Sixth Amendment right to effective assistance of counsel for trial?

Text of the case:

https://www.supremecourt.gov/opinions/21pdf/20-1009_19m2.pdf

West Virginia v. EPA

In 2015, during the Obama administration, the Environmental Protection Agency (the “EPA”), a federal agency, made a rule intended to reduce carbon dioxide (“CO₂”) emissions from coal-fired power plants. CO₂ emissions pollute the air and contribute to global warming.

To reduce the impact on climate change, the EPA developed a “broader, forward-thinking approach” to improve the overall power system. This new approach would shift from coal to sources of renewable and clean energy: natural gas, wind, and solar. In making this rule, the EPA relied on the EPA’s ability to regulate emissions from existing coal plants, which was delegated to the EPA by Congress.

In 2019, during the Trump administration, the EPA repealed the rule. In 2021, during the Biden administration, the EPA announced that it would revisit the Obama rule.

The role of a federal agency like the EPA is to ensure standards are the same in all the states, rather than allowing each individual state to create its own regulations. However, a federal agency’s power is limited to the specific authority Congress grants to the agency. The Biden administration had not yet set a new rule in place when the Supreme Court found it could review whether Congress had delegated authority to the EPA to not only regulate emissions from coal plants, but also to shift to alternative energy sources. In a 6-3 opinion, the Supreme Court held in June 2022 that the EPA does not have authority to make such a rule.

The court relied on the “major questions” doctrine in its decision. This doctrine requires that for major questions, Congress must have clearly given an agency explicit authority to make a regulation that is of vast economic or political significance. Here, the Court did not think Congress had clearly delegated to the EPA the ability to transform how energy is delivered.

From the majority opinion:

Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible “solution to the crisis of the day.” [Quoting a prior case.] But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme. A decision of such magnitude and consequence rests



The John Amos Power Plant in West Virginia. Coal is being transported by conveyor belt into the facility where it will be pulverized.

with Congress itself, or an agency acting [according to clear authority given by Congress].

From the dissenting opinion:

Today, the Court strips the Environmental Protection Agency (EPA) of the power Congress gave it to respond to “the most pressing environmental challenge of our time.” [Quoting a prior case.]

...

Yet the Court today prevents congressionally authorized agency action to curb power plants’ carbon dioxide emissions. The Court appoints itself — instead of Congress or the expert agency — the decisionmaker on climate policy. I cannot think of many things more frightening.

WRITING & DISCUSSION:

- Why do you think the EPA’s position changed over the three presidential administrations?
- Should the EPA have broad authority to enact rules that shift our power system to alternative energy sources in order to have a major impact on climate change?
- Can you think of other agencies whose authority might be impacted by the “major questions” doctrine? (See “Federal Agencies and Public Policy” in this issue of *Bill of Rights in Action* for other agencies.)

Text of the case:

https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf

Houston Community College System v. Wilson

In 2013, David Wilson was elected to the nine-member Board of Trustees for the Houston Community College System (HCC). A community-college board of trustees governs community colleges much the same as a school board does for K-12 schools. The HCC operates various community colleges in Texas.

Soon after his election, Wilson began to openly disagree with other HCC trustees and criticized decisions of the HCC. He filed several lawsuits against the HCC itself. In 2016, the HCC publicly reprimanded Wilson.

Wilson responded with numerous actions. He gave interviews to various media outlets, complaining that the HCC was acting unethically. He filed a new state lawsuit against the HCC, alleging that the HCC violated its own bylaws (official rules) by allowing videoconference votes. When he was prohibited from participating in an HCC meeting to discuss his lawsuit, he sued the HCC again. He set up robocalls to constituents to complain about the HCC. For these and other actions, the HCC verbally censured Wilson in 2018. (Censure is a formal, public reprimand.) They called Wilson's conduct "reprehensible" and prohibited him from being elected to certain positions on the HCC, among other things.

Wilson asserted in one of his state lawsuits that the HCC's censure was retaliation for his critical speech against the HCC. He claimed the retaliation violated his First Amendment right to freedom of speech. Eventually, his case was moved to federal court where, on appeal, Wilson was allowed to go forward with his First Amendment claim based on the HCC's censure of him. The HCC appealed to the U.S. Supreme Court, challenging the federal appeals court's decision.

In a unanimous decision, the Supreme Court held that Wilson did not have an "actionable First Amendment claim arising from the Board's purely verbal censure." (A claim is *actionable* when it can be legitimately argued in a court of law.) The Supreme Court cited the long history of elected bodies, such as legislatures and school boards, being able to censure their members for misconduct, including making "objectionable" comments about other members or to the media. Elected bodies do not violate the First Amendment when they censure their members.



From the unanimous opinion:

Mr. Wilson was an elected official. Elected representatives are expected to shoulder a degree of criticism about their public service from their constituents and their peers — and to continue exercising their free speech rights when the criticism comes. The First Amendment surely promises an elected representative like Mr. Wilson the right to speak freely on questions of government policy, but it cannot be used as a weapon to silence other representatives seeking to do the same. The censure at issue before us was a form of speech by elected representatives concerning the public conduct of another elected representative. Everyone involved was an equal member of the same deliberative body. The censure did not prevent Mr. Wilson from doing his job, it did not deny him any privilege of office, and Mr. Wilson does not allege it was defamatory.

WRITING & DISCUSSION

- In your opinion, is there any criticism elected officials should be able to make of their fellow members for which they should not be censured? If so, what is it?
- Had David Wilson only filed lawsuits against the HCC and not spoken to the media or directly to his fellow trustees, would the Supreme Court have ruled otherwise? Why or why not?

Text of the case: https://www.supremecourt.gov/opinions/21pdf/20-804_j426.pdf

FEDERAL AGENCIES AND PUBLIC POLICY



On July 20, 1969, the United States launched the historic first moon landing. The Apollo 11 spacecraft carried the astronaut Neil Armstrong who, upon stepping foot on the moon, uttered the famous line: “That’s one small step for man, one giant leap for mankind.” How did the U.S. government organize such a complicated and risky mission? It did it through a federal agency we know as the National Aeronautics and Space Administration, or NASA.

Congress has the power to create federal agencies that are tasked for a specific purpose. Congress first exercised the power to create an agency in 1789 with the U.S. Customs Service. (Customs involves controlling the flow of people and goods entering or leaving the United States.) Today, the U.S. government operates over 400 federal agencies.

Since 1789, and especially in the 20th century, agencies have increasingly become more involved in providing services to and regulating actions of the American people, private corporations, and organizations.

Responsibilities historically reserved for just a few agencies have spread out over the hundreds of agencies that now exist. For example, the U.S. Customs Service established duties (taxes on imports); policies to stop smuggling (illegal imports and exports) and human trafficking; and procedures for immigration. But that agency no longer exists, and those different tasks are now carried out by multiple agencies: **U.S. Customs and Border Protection** prevents people from entering the U.S. illegally and illegal substances and items from being brought into the U.S.; **U.S. Immigration and Customs Enforcement** enforces federal immigration laws; and **U.S. Citizenship and Immigration Service** establishes immigration policies, including naturalization.

Below, we will see how agencies are organized and how the federal government has the power to create them by law.

Agencies in All Three Branches

In our system of checks and balances, the legislative branch (Congress) establishes agencies, even those that are part of the executive and judicial branches. Most federal agencies are part of the executive branch and report directly to the White House or to a Cabinet secretary. But federal agencies may be under the jurisdiction of Congress or the judiciary as well. There are too many agencies to list them all here, so what follows are just some examples (in bold).

Under the executive branch, many agencies are part of specific Cabinet departments. The **Federal Bureau of Investigation** is under the Department of Justice and is the main agency responsible for federal criminal investigations and domestic counterterrorism. The **U.S.**

Citizenship and Immigration Service is under the Department of Homeland Security, the **Food and Drug Administration** is under the Department of Health and Human Services, the **Bureau of Indian Affairs** is under the

Department of the Interior, and the **U.S. Forest Service** is under the Department of Agriculture.

Many other agencies that are part of the executive branch are considered *independent* because they are not under the jurisdiction of any Cabinet department. The president of the United States appoints the heads of both Cabinet agencies and independent agencies, but the president has limited power in directing or firing the heads of independent agencies.

NASA, for example, is an independent agency responsible for science and technology related to air and space. NASA not only develops and coordinates space flights, but also manages 16 satellites that orbit the earth, monitoring the earth’s climate, land, and oceans. Other independent agencies include the **Central Intelligence Agency** (CIA) and the **Environmental Protection Agency**.

*Today the U.S.
government operates over
400 federal agencies.*

Under the judicial branch, the **Sentencing Commission** develops policies for sentencing (appropriate punishments) in federal criminal courts. Another judicial branch agency is the **United States Supreme Court Police**, led by the **Marshal of the United States Supreme Court**. This police force handles security at the Supreme Court building and for the personal protection of the justices of the Supreme Court.

Legislative agencies assist Congress in managing the great number of federal laws. Legislative agencies include **The Library of Congress**, which is the largest library in the world; established in 1800, it is the oldest cultural institution in the United States, serving as the research library for Congress. The **Congressional Budget Office** is a legislative agency that prepares non-partisan analysis of the economic issues related to Congress's proposed bills.

Congress's Power

The U.S. Constitution does not specifically establish any federal agencies nor does it describe how agencies can be created. Over time, however, the Supreme Court of the United States has articulated the power that Congress has to create agencies. The power comes from three constitutional sections:

- Article I of the Constitution enumerates (specifically lists) areas that Congress can regulate, such as the power to raise revenue through taxes.
- Article I, Section 8, Clause 18 empowers Congress to make laws that are “necessary and proper” for the federal government to exercise its powers under the Constitution.
- Article II, Section 2 authorizes the executive branch to appoint “officers” who are “established by law.”

In 1946, Congress passed the Administrative Procedure Act (APA) to establish uniform standards for how agencies create regulations and how they judge whether regulations have been violated. Essentially, Agencies develop *regulations* that have the force of law, to guide actions in a number of areas. This is how, for example, the FDA has the power to regulate the production of pharmaceuticals in the United States. Under the APA, federal agencies have three key powers: the power to execute (carry out) laws and regulations, the power to adjudicate laws or regulations (in administrative law courts),

Estimated Federal Full-Time Civilian Employment in the Executive Branch, 2022	
Cabinet Agencies	
Defense - Military Programs (Civilians)	785,921
Veterans Affairs	425,457
Homeland Security	198,380
Justice	117,888
Treasury	103,490
Agriculture	91,491
Health and Human Services	82,892
Interior	66,993
Transportation	54,695
Commerce	42,996
State	25,397
Labor	17,298
Energy	15,998
Housing and Urban Development	8,799
Education	4,200
Other agencies	
Postal Service	559,944
Social Security Administration	61,494
Corps of Engineers - Civil Works	24,198
National Aeronautics and Space Administration	17,898
Environmental Protection Agency	15,398
All other small agencies	13,499
General Services Administration	12,299
Small Business Administration	9,999
Tennessee Valley Authority	9,999
International Assistance Programs	5,999
Federal Deposit Insurance Corporation	5,899
Smithsonian Institution	5,299
Securities and Exchange Commission	4,700
National Archives and Records Administration	3,000
Nuclear Regulatory Commission	2,900
Equal Employment Opportunity Commission	2,300
Office of Personnel Management	2,200
Consumer Financial Protection Bureau	1,600
Federal Communications Commission	1,600
National Science Foundation	1,600
U.S. Agency for Global Media	1,500
National Labor Relations Board	1,400
Federal Trade Commission	1,300
National Credit Union Administration	1,200
Other Defense Civil Programs	1,100
TOTAL	2,810,219

Source: Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2022, Office of Management and Budget

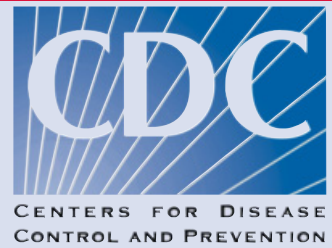
The Origins of the CDC

The CDC was created in 1946 along with the passage of the APA. But the CDC's historical roots go back even farther. Joseph Mountin and his brother Ned both contracted the disease diphtheria in early childhood. Joseph survived the illness, but Ned did not. Joseph Mountin went on to become a physician.

At the start of World War II, Mountin's unique skills were needed to combat malaria, a disease prevalent in the American Southeast, where most of the U.S. basic military training was conducted. Mountin went to work for the Malaria Control in War Areas (MCWA), headquartered in Atlanta, Georgia. MCWA employed entomologists (scientists who study insects) and engineers to eradicate the mosquitoes that spread malaria, as well as healthcare professionals to prevent and treat the illness in humans. As the war ended, MCWA expanded its mission to treat other mosquito-borne illnesses, including dengue fever and yellow fever.

Mountin realized that the knowledge MCWA had acquired and its location in Atlanta could be used to promote public health and fight communicable disease outbreaks of all kinds, including the disease that killed his brother. In 1946, the MCWA became the Communicable Disease Center (CDC), then housed under the Public Health Service.

Today the CDC is officially known as the Centers for Disease Control and Prevention. The CDC's mandate has expanded to developing strategies to combat all manner of infectious disease (including COVID-19), to promote health in a variety of ways (such as establishing rules for nutritious meals for public school students and promoting "green spaces" for outdoor activities), and to end epidemics (including the opioid epidemic).



and the power to make regulations. The making of regulations is simply known as rulemaking.

In its rulemaking capacity, each agency has a role in enacting and promoting public policy. A policy is any plan or course of action by a government. Policies include laws, regulations, procedures, and administrative actions.

While Congress holds the sole *lawmaking* authority under the Constitution, Congress delegates a lot of *rulemaking* authority to federal agencies. In other words, the law is the guide that must be followed, but regulations are the instructions for how the law should be carried out. Specialists within each federal agency aid in thoroughly filling in the technical details necessary for effective policy.

Looking at NASA one more time, most members of Congress would not know where to begin in establishing regulations for safe and successful rocket launches. Congress recognizes that the creation of these sorts of rules is best left to the experts at NASA. That is how Apollo 11 made it to the moon and back in 1969 and how, today, satellites enable us to use map apps with GPS tracking on our smart phones.

Rulemaking Under the APA

The APA's rulemaking process seeks to make the most of the knowledge of experts, while also allowing for oversight and input from the public. The APA established that rulemaking requires public input before regulations are finally approved.

The APA established five domains of the policy process: problem identification, policy analysis, strategy and policy development, policy enactment, and policy implementation.

Let's look at an example with the **Centers for Disease Control and Prevention** (CDC), which

is overseen by the Department of Health and Human Services:

- I. Problem Identification:** The CDC has a medical research arm tasked with identifying existing health challenges and new threats to public health, such as the COVID-19 virus.
- II. Policy Analysis:** The CDC weighs the relative costs and benefits of different policy solutions to problems. The agency's policy solutions, once adopted, become orders or regulations with the force of law. For example, in January 2021, the CDC required face masks on public transportation to help stop the spread of COVID-19. The CDC had to weigh the social and economic *costs* (or burdens) on people who use public transportation against the health *benefits* of everyone wearing masks. Social costs included the difficulty of understanding others' emotions through facial expressions that were not visible with masks. Economic costs included affordability and availability of masks. The CDC determined that the benefit of halting the spread of the disease outweighed the costs.
- III. Strategy and Policy Development:** The CDC drafts the policy, defines how the policy will operate in the real world, and strategizes how best to engage stakeholders (everyone who would be affected by the policy).
- IV. Policy Enactment:** The CDC monitors the enactment, or creation, of the policy by others. It often publishes guidelines or recommendations around the policy for the public. States might adopt CDC guidelines and pass state-level laws to enforce them. For example, in June 2020, the governor of California issued a statewide order for people to wear face masks in most indoor public

places, based largely on CDC recommendations. (As of this writing, face masks are no longer required statewide, and virtually all local jurisdictions have lifted the requirement, as well.)

V. Policy Implementation: The CDC coordinates various resources, including people, to implement its policy. It develops ways to evaluate and monitor the success of the policy in meeting the challenge of the problem identified in domain I. As a result of a federal court order in April 2022, the CDC's face-mask requirement on public transportation is no longer being implemented.

At every stage of enacting health-care policy, the CDC engages with policy makers in other agencies (such as the **National Institutes of Health**), independent medical experts, and members of the public. The CDC gathers feedback on the potential challenges, possible consequences, and criticisms of proposed policies. It also educates the public and raises awareness about threats to public health. Any member of the public may weigh in on health care policy at the CDC website.

WRITING & DISCUSSION

1. Choose two of the following federal agencies listed. For each, research and identify (a) whether it's an independent agency or a Cabinet agency in the executive branch of government; (b) what year it was founded; and (c) what the agency's main responsibilities are:

Bureau of Indian Affairs
 Central Intelligence Agency
 Environmental Protection Agency
 Federal Aviation Administration
 Food and Drug Administration
 Social Security Administration
 National Weather Service
 Office for Civil Rights
 United States Forest Service
 United States Secret Service
 U.S. Citizenship and Immigration Service
 Veterans Health Administration



An inspector from the Food and Drug Administration checks the temperature of strawberries at a salad bar.

2. Weighing the costs against the benefits of proposed policies is simply called *cost-benefit analysis*. Think about the kinds of social, economic, and other costs that might have been associated with the Apollo 11 moon landing. Also think about the kinds of benefits of the Apollo 11 mission: social, economic, scientific, or otherwise. Was NASA's mission worth it? Why or why not?
3. Imagine the three branches of the federal government operating without federal agencies. Would they be able to function effectively? Why or why not? Use evidence from the article.

ACTIVITY: Cost and Benefits of Public Health Policy

1. In small groups, choose one major public-health concern. Examples include the importance of regular exercise, healthy eating, preventing heart disease, stopping opioid addiction, and preventing seasonal flu.
2. Propose a policy to promote public health in this area.
3. List the social and economic costs against the health benefits of your proposed policy.
4. Evaluate your policy: Do the benefits outweigh the costs? If yes, then your policy should be enacted and implemented.
5. Report your findings to the class.

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INDONESIA'S STRUGGLE FOR DEMOCRACY

Indonesia is an archipelago, a large group of islands, in Southeast Asia. With 270 million people, it is the fourth most populated country in the world and the third largest democracy—a status it has achieved through decades of struggle and still struggles to maintain. Almost 90 percent of its citizens are Muslims who adhere to the religion of Islam, and Indonesia has the highest Muslim population of any country in the world. There are over 17,000 islands in the archipelago with over a thousand ethnic groups, speaking hundreds of languages. Java and Sumatra are the most populated of its islands.

Indonesia is located where the Indian Ocean and South China Sea come together. This area very early became a natural site of trade between China, India, and Arabia. Various religions took root as they spread with trade, namely Buddhism, Hinduism, Confucianism, and Islam. When European powers arrived in the area in later years, they also sought to spread Christianity.

Buddhists and Hindus established kingdoms in the archipelago by 1300. Marco Polo visited a new Muslim community of traders there in 1292. In the 1300s, Muslim traders from China were occupying Java. From the 1400s on, conversions to Islam spread slowly.

By 1600, however, Muslim sultans were ruling important parts of the archipelago, and Islam had largely replaced Buddhism and Hinduism. Aceh (pronounced Ah-chay), an area at the northwestern tip of Sumatra, had become an independent trading state and center of Islamic scholarship.

In the 1500s, Portuguese, Dutch, and British traders first began to arrive in what they called the East Indies. They were trading for spices like cloves and nutmeg, sometimes worth their weight in gold in Europe. The Europeans eventually called the archipelago Indonesia.

Dutch Colonialism

In 1602, the Dutch East India Company (the “Company”) formed to control Dutch trading in Southeast Asia. With the power to raise an army, wage war, and govern territory, the Company soon dominated trade there. It sometimes battled other European powers to take over key ports. By the late 1600s, the Company monopolized the spice trade in the East Indies.

The Company increased its profits by forcing native farmers to cultivate coffee for export instead of food crops for local consumption. By 1800, competition from Britain and other European countries weakened the Dutch East India Company. The Dutch then



President Sukarno addressing a crowd of demonstrators demanding general elections in 1950.

replaced it by establishing governmental control over the East Indies. They turned Indonesia into a Dutch colony.

The Dutch governor of the East Indies imposed the Cultivation System on the colony in the 1830s. Under this system, the Dutch colonists continued to force farmers to use part of their land to grow export crops like coffee and sugar. The Dutch also set the prices to assure themselves a profit. These policies provoked resistance by many Indonesian people. In 1873, the Dutch violently seized the predominantly Muslim state of Aceh.

In 1927, a new leader, Sukarno, co-founded the Indonesian Nationalist Party. (Javanese custom is to go by one name only.) Sukarno's goal was to win independence from the Dutch and establish a secular (non-religious) nation. However, in 1942 during World War II, his plans were interrupted when Japan invaded and occupied Indonesia, forcing the Dutch to flee.

Japan surrendered in 1945 at the end of World War II, and Sukarno and other nationalists declared Indonesia's independence. The Dutch returned to resume control of their colony, but nationalists rejected this action through four years of bloody guerilla warfare known as the Indonesian National Revolution. In 1949, the Netherlands recognized Indonesian independence.

Sukarno's Authoritarian Regime

Upon independence, the revolutionary nationalist leaders chose Sukarno to be Indonesia's first president. When the nationalists had first declared independence in 1945, Sukarno was appointed president and announced five principles for governing:



1. *Belief in God*—Instead of establishing an officially Muslim state, this principle was not specifically Islamic and was a compromise to accommodate diverse faith groups.
2. *Democracy by consensus*—This meant representative democracy in which the representatives would deliberate with each other to make laws.
3. *Internationalism*—This referred to Indonesia being neutral in foreign affairs.
4. *Social prosperity*—This principle concerned the economy, which Sukarno believed should not depend on exporting the country's resources as was done under Dutch colonialism.
5. *National unity*—This principle meant Indonesian nationalism.

These principles still serve as the basis of the Indonesian constitution, which was adopted in 1950. The government recognized six official religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism.

The constitution created a parliamentary law-making assembly that elected the president. In Indonesia's first national election in 1955, dozens of political parties ran assembly candidates, but none won a majority of seats. Sukarno's Nationalist Party won 22 percent; two Islamic parties together won 38 percent; and the Communist Party won 16 percent.

In 1957, a faction of the military attempted to overthrow Sukarno. They opposed his socialist economic policies and his efforts to increase his own power.

Sukarno struck back by making an alliance with another military faction headed by General Suharto. Sukarno then announced he was abandoning the democratic model of Western countries of Europe and the United States.

During the next few years, Sukarno devised what he called "Guided Democracy." This system increased his personal control over the country, enforced by the military. He banned certain political parties and newspapers that opposed his policies. Corruption in the form of special favors for his political allies and family

members became widespread. By these actions, Sukarno transformed his government into an authoritarian regime or *autocracy*, the rule by a single "strongman." Meanwhile, the Communist Party was gaining support, which the military saw as a challenge to its own power.

In 1965, a small group of military officers killed several generals in an attempted *coup* (takeover) of Sukarno's government. General Suharto took charge. With little evidence, Suharto blamed communists for the coup attempt. He launched crackdown on Indonesians accused of being communists and even those suspected of merely sympathizing with them.

During the next few years, military death squads slaughtered hundreds of thousands of Suharto's real and perceived political opponents, with funding and intelligence support from the United States. Millions of others were imprisoned. Suharto clearly was in command of the country. He forced Sukarno to yield his presidential powers to him. In 1971, Suharto fixed an election to confirm himself as president.

Suharto's Authoritarian Regime

Gen. Suharto instituted a system he called the New Order. It was dominated by the military, politically conservative, anti-communist, and favored a capitalist economy. Under the New Order, for example, citizens had to carry an ID card that stated their religion. They could leave this religion requirement blank, but that could lead to suspicion they were atheists or communists. Blasphemy (insulting or showing lack of respect for God) was a crime.

Suharto improved the economy of Indonesia, but this came at the cost of creating a military-style authoritarian regime. Corruption, arrests of protesters, press censorship, fixed elections, and a parliament that did everything Suharto demanded caused discontent among many Indonesians.

The boundaries of Indonesia's island nation had never been settled. In 1975, Suharto ordered a military invasion of the former Portuguese colony of East Timor, whose inhabitants were largely Catholic. What followed



Then-candidate for president Joko “Jokowi” Widodo gestures to a crowd of supporters in 2014. An estimated 133 million Indonesians voted in the presidential election that year.

were years of brutal occupation by the Indonesian military. The native Timorese people resisted in a guerilla war. In 1976, a revolt to secede from Indonesia and establish government based on Sharia (law derived from Islamic religious texts) arose in the heavily Muslim province of Aceh.

An economic collapse, strong opposition by Muslim leaders, and demands for democratic reforms by student protesters finally forced Suharto to resign in 1998.

After Suharto

After Suharto, there was a period of democratic reforms. Many political parties formed, some democratic, some favoring the New Order, and some calling for an Islamic state. Voters now directly elected the president — limited to two five-year terms — and members of the People’s Representative Council, the national law-making body. These were the first real democratic elections in decades.

However, there was discontent among some ethnic groups, and East Timor finally achieved independence in 2002. Among some Indonesian Muslims, calls for a stronger role for Sharia law increased. Some fringe Muslim extremist groups set off bombs in tourist areas like Bali.

In Aceh, the insurgency begun in 1976 continued after the end of Suharto’s rule. The Indonesian military threatened to invade and crush it. But, in 2005, the government and Aceh rebels signed a peace agreement, ending the on-and-off fighting that had lasted for decades.

Aceh remained part of Indonesia but was granted special privileges. Sharia law (and courts) would apply only to Muslims and did not replace Indonesian civil and criminal law. For example, Sharia law would apply to morality offenses such as gambling, adultery, and drinking alcohol in Muslim communities, while Indonesian

law would apply to other matters. Some hoped Aceh would someday become a model for all of Indonesia.

President Jokowi

Indonesians elected Joko Widodo (known as “Jokowi”) as president in 2014. Most viewed him as a moderate favoring democracy and a separation of religion and the government. But he disappointed pro-democracy groups when he appointed many military men to top positions in his government.

Jokowi also did not speak out against growing intolerance of minority religions. In 2017, a former Christian governor, hoping to run for president, said in a speech that Muslim leaders were using a verse in the Koran to trick voters not to vote for a non-Muslim. For this, he was convicted and imprisoned for blasphemy.

In 2019, Jokowi ran for re-election. His opponent was Prabowo Subianto, a former general in the Suharto regime known by his first name. Observers called this one of the most divisive elections in Indonesia’s history, with religion playing a heavy role. The country’s Muslim majority divided between those who supported Jokowi (wanting to keep Indonesia a secular democracy) and those who supported Prabowo (wanting to expand the role of Islam in governance). Members of minority religions mostly backed Jokowi.

On April 17, 2019, Jokowi won re-election with 55.5 percent of the popular vote versus 44.5 percent for Prabowo. Voter participation was 80 percent. After his re-election, Jokowi stated, “We have to rely on Indonesia’s culture, which is diverse and tolerant.”

Nearly 20 political parties ran candidates for the 575 seats in the People’s Representative Council, the national legislature. No party won a majority. Two-thirds of all elected members eventually formed a coalition to allow Jokowi to form a government. This election seemed like a rejection of both authoritarian rule based on the New Order and rule based on Islamic law in Indonesia.

Prabowo disputed the presidential election, claiming widespread fraud. For a while, his supporters protested and clashed with police. He challenged the election result in the Constitutional Court, but it rejected his claims. President Jokowi later appointed Prabowo as his defense minister.

The Struggle for Democracy

What has happened since the election of Jokowi in 2019? Indonesia has slowly made progress in its efforts to provide its citizens democratic rights, but not without

struggles. Freedom House, a largely U.S. government-funded, independent nonprofit, evaluates and reports the degree of democratic freedoms in the countries of the world. The organization uses countries' political rights (such as voting rights) and civil liberties (such as freedom of speech) as measures. Its 2021 report rated Indonesia "partly free" with a score of 59/100. By comparison, Freedom House rated the United States 83/100 ("free") and China 9/100 ("not free").

Freedom House commended Indonesia for "impressive democratic gains" since the fall of the Suharto authoritarian regime in 1998. It stated in the 2021 report that the country has made significant progress in free and fair elections and freedom of the press. Women enjoy full political rights. In addition, there have been relatively peaceful transfers of presidential power from one party to another after elections.

Nevertheless, Freedom House identified several areas where Indonesia is still in a struggle for democracy. Bribery, embezzlement, and other forms of corruption are widespread throughout the government. Discrimination and violence against minority religions and ethnic groups go largely unchecked. Police make unlawful arrests and suppress protests. Another movement demanding independence has erupted in a province populated by native Papuans who have suffered racial discrimination and violence by the Indonesian government and military.

According to many scholars who study Indonesia, several difficult challenges must be overcome in its ongoing struggle for democracy:

- Indonesians must peacefully settle the debate within the Muslim majority between those who want a secular democracy and those who want to transform Indonesia into a religious state under Sharia law.
- Some politicians call for abolishing the direct election of the president and a return to the national legislature appointing the president.
- The history of religious and ethnic intolerance and discrimination have made Indonesia's diverse peoples difficult to unify.
- Finally, if the country again falls into disorder, the military may take over the government as it has in the past.

WRITING & DISCUSSION

1. Why did geography play an important role in the history of Indonesia?
2. In what ways did Dutch colonialism, the Japanese occupation, and authoritarian regimes hold back the development of democracy in Indonesia?
3. Which one of challenges listed at the end of the article do you think is the greatest threat to the future of Indonesian democracy? Why?

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ACTIVITY: What Does Democracy Require?

What are the *most important* characteristics of a democracy?

1. Form small groups of four or five students each. In your group, decide your group's *top five* choices from the list below. Be ready to explain your group's choices to the rest of the class.

a written constitution and bill of rights

free and fair regularly held elections in which lawmakers are directly elected by voters

all adult citizens have the right to vote

competitive multiple political parties

rule of law instead of rule by an authoritarian strongman

peaceful transition from one government administration to another

civilian control of the military

equal rights and tolerance for all people regardless of religion, gender, racial identity, ethnicity, nationality, political affiliation, and sexual orientation

right to practice one's faith, with no official state religion

freedom of speech

right to participate in peaceful protests

strong safeguards against corruption in government

free public schools that teach civics and good citizenship

independent press and media free of government control

independent courts free of political pressure

workers' rights to organize and strike

protections against use of illegal force by police

a free-enterprise capitalist system with the right to own property

right to a fair trial and legal defense

right to own guns

2. Your group may add other characteristics to this list. Be ready to explain your additions.

3. Each group takes turns sharing their list with the rest of the class.

The Global Refugee Crisis

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Standards Addressed

The Global Refugee Crisis

National World History Standard 44 (McREL): Understands the search for community, stability, and peace in an interdependent world. High School Benchmark 10: Understands the effectiveness of United Nations programs. . . .

National World History Standard 45 (McREL): Understands major global trends since World War II.

National U.S. History Standard 31 (McREL): Understands economic, social, and cultural developments in the contemporary United States. High School Benchmark 2: Understands how recent immigration and migration patterns impacted social and political issues (e.g., major issues that affect immigrants and resulting conflicts . . .)

California History-Social Science Standard 10.9: Students analyze the international developments in the post-World War II world. (8) Discuss the establishment and work of the United Nations. . . .

California History-Social Science Standard 10.10: Students analyze instances of nation-building in the contemporary world in at least two of the following regions or countries: the Middle East, Africa, Mexico, and other parts of Latin America, and China. (2) Describe the recent history of the regions, including political divisions and systems, key leaders, religious issues, natural features, resources, and population patterns.

California History-Social Science Standard 11.9: Students analyze U. S. foreign policy since World War II. (1) Discuss the establishment of the United Nations. . . .

California History-Social Science Standard 11.11: Students analyze the major social problems and domestic policy issues in contemporary American society. (1) Discuss the reasons for the nation's changing immigration policy with emphasis on how the Immigration Act of 1965 and successor acts transformed American society.

California History-Social Science Standard 12.2: Students evaluate and take and defend positions on the scope and limit of rights and obligations as + -democratic citizens, the relationships among them, and how they are secured. (6) Explain how one becomes a citizen of the United States, including the process of naturalization (e.g., literacy, language, and other requirements)

Common Core State Standards: SL.9-10.1, SL. 9-10.3, RH. 9-10.1, RH. 9-10.2, RH. 9-10.10, WHST. 9-10.10, SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

Supreme Court Highlights

National Civics Standard 18 (McREL): Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. High School Benchmark 2: Knows historical and contemporary practices that illustrate the central place of the rule of law (e.g., submitting bills to legal counsel to insure congressional compliance with constitutional limitations, higher court review of lower court compliance with the law, executive branch compliance with laws enacted by Congress).

National Civics Standard 21 (McREL): Understands the formation and implementation of public policy. High School Benchmark 4: Understands why agreement may be difficult or impossible on issues such as abortion because of conflicts about values, principles, and interests.

California History-Social Science Standard 8.2: Students analyze the political principles underlying the U.S. Constitution and compare the enumerated and implied powers of the federal government. (6) Enumerate the powers of government set forth in the Constitution and the fundamental liberties ensured by the Bill of Rights.

California History-Social Science Standard 12.2: Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured. (5) Describe the reciprocity between rights and obligations; that is, why enjoyment of one's rights entails respect for the rights of others.

California History-Social Science Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment and the due process and equal-protection-of-the-law clauses of the Fourteenth Amendment.

Common Core State Standards: RH.6-8.4, RH.6-8.10; RL.8.10; WHST.6-8.10, SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

Federal Agencies and Public Policy

National U.S. History Standard 28 (McREL): Understands domestic policies in the post-World War II period.

National Civics Standard 16 (McREL): Understands the major responsi-

bilities of the national government for domestic and foreign policy, and understands how government is financed through taxation.

National Civics Standard 21 (McREL): Understands the formation and implementation of public policy. High School Benchmark 2: Understands the processes by which public policy concerning a local, state, or national issue is formed and carried out. High School Benchmark 3: Knows the points at which citizens can monitor or influence the process of public policy formation.

California History-Social Science Standard 12.7: Students analyze and compare the powers and procedures of the national, state, tribal, and local governments. (5) Explain how public policy is formed, including the setting of the public agenda and implementation of it through regulations and executive orders.

Common Core State Standards: SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

Indonesia Struggles for Democracy

National World History Standard 34 (McREL): Understands how Eurasian societies were transformed in an era of global trade and emergence of European power 1750-1870. High School Benchmark 3: Understands how Western culture influenced Asian societies (e.g., British policies in India compared to Dutch colonial practices in the East Indies . . .)

National World History Standard 44 (McREL): Understands the search for community, stability, and peace in an interdependent world. High School Benchmark 5: Understands the role of political ideology, religion, and ethnicity in shaping modern governments (e.g., the strengths of democratic institutions and civic culture in different countries and challenges to civil society in democratic states; how successful democratic reform movements have been in challenging authoritarian governments in Africa, Asia, and Latin America. . .)

National Civics Standard 8 (McREL): Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society. High School Benchmark 3: Knows the major ideas about republican government that influenced the development of the United States Constitution. . . . High School Benchmark 10: Knows how the distinctive characteristics of American society are similar to and different from the characteristics of other societies.

California History-Social Science Standard 10.4: Students analyze patterns of global change in the era of New Imperialism in at least two of the following regions or countries: Africa, Southeast Asia, China, India, Latin America, and the Philippines. (2) Discuss the locations of the colonial rule of such nations as England, France, Germany, Italy, Japan, the Netherlands, Russia, Spain, Portugal, and the United States.

California History-Social Science Standard 12.1: Students explain the fundamental principles and moral values of American democracy as expressed in the U. S. Constitution and other essential documents of American democracy. (2) Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured.

California History-Social Science Standard 12.9: Students analyze the origins, characteristics, and development of different political systems across time, with emphasis on the quest for political democracy, its advances, and its obstacles. (5) Identify the forms of illegitimate power that twentieth-century African, Asian, and Latin American dictators used to gain and hold office and the conditions and interests that supported them. (8) Identify the successes of relatively new democracies in Africa, Asia, and Latin America and the ideas, leaders, and general social conditions that have launched and sustained or failed to sustain them.

Common Core State Standards: SL.9-10.1, SL. 9-10.3, RH. 9-10.1, RH. 9-10.2, RH. 9-10.10, WHST. 9-10.10, SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

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People v. Cobey

Murder and Manslaughter

Featuring a pretrial argument on the Fourth Amendment Grades 6-12

People v. Cobey is the trial of Jamie Cobey, a horticulturist living in a semi-rural town in the high desert. Cobey is charged with the homicide of Cobey's landlord and next-door neighbor, Erik Smith. The prosecution will argue that Cobey should be convicted of first-degree murder or the lesser-included offense of voluntary manslaughter.

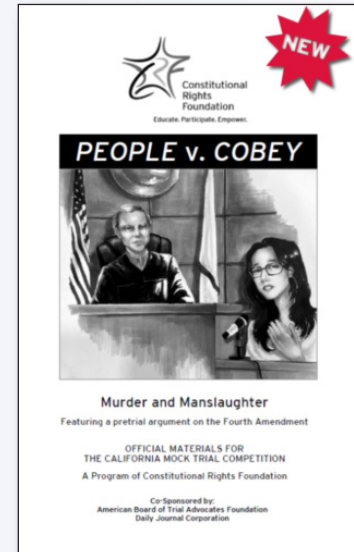
The relationship between Cobey and Smith had deteriorated in recent years. The tension between the two intensified once the pandemic eviction moratorium went into effect, and Smith wanted to evict Cobey and Cobey's elderly mother for non-payment of rent. After Smith shut off the power to Cobey's home, Cobey's mother died on April 22. In the early afternoon of April 29, Erik Smith opened his mailbox and was bitten by a Mojave rattlesnake that was within the mailbox.

The prosecution alleges that on the morning of April 29, Jamie Cobey intentionally placed the rattlesnake with its rattle removed in Smith's mailbox so that the snake would fatally bite Smith. Prosecution produces several witnesses to support its case.

The defense argues that Jamie Cobey lacked the specific intent for first-degree murder, the sudden quarrel or heat of passion needed for voluntary manslaughter, and the act of placing the rattlesnake inside the mailbox.

The pretrial argument centers on the Fourth Amendment protection against unreasonable search and seizure. The question is whether Erik Smith's use of a smart camera provided by law enforcement to capture an image of snake-feeding tongs on the property of Jamie Cobey constituted a search under the Fourth Amendment and therefore required a search warrant, or whether it fell outside the warrant requirement.

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People v. Croddy

Burglary, Aiding and Abetting and Accessory After the Fact

Featuring a pretrial argument on the Fifth Amendment Grades 6-12

People v. Croddy is the trial of Lee Croddy who hosts a popular YouTube channel. Croddy has been charged with two counts: (1) aiding and abetting in the commission of first-degree burglary by another, and (2) accessory after the fact. Croddy posts videos on Youtube in which Croddy discusses topics Croddy believes are suppressed by the government. One favorite topic of Croddy's is government cover-ups related to UFOs. Croddy attracted the attention of an enthusiastic fan, Remi Montoya. For almost a year, Montoya and Croddy communicated frequently in non-public Twitter group chats.

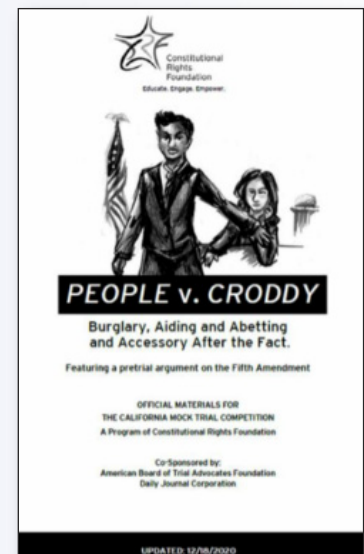
During one group chat, Croddy shared a short video clip that included an image of government documents. The documents contained personal information about an official named Drew Marshak who allegedly had information about UFOs. A few days later, Montoya stole a briefcase from Marshak's home and copied files from Marshak's computer. In a brief confrontation, Montoya hit Marshak in the face. Montoya later pleaded guilty to first-degree burglary and assault on a peace officer.

The prosecution alleges that Lee Croddy aided and abetted Montoya in the burglary. The prosecution will present evidence that Croddy showed a video with Marshak's information to Montoya and others in the group chat while instructing Montoya to "take what's ours" from Marshak and that Montoya acted under Croddy's influence. The prosecution further alleges that Croddy let Montoya spend the night in Croddy's home after the burglary, knowing that Montoya had committed a crime.

The defense argues that Lee Croddy did not knowingly aid or abet Montoya in any crime. The defense will present evidence that Croddy merely intended to build camaraderie within a political movement for government transparency through Croddy's videos, chat messages, and text messages. Therefore, the defense argues that Croddy did not have the intent to aid or abet Montoya's criminal acts. Furthermore, Croddy had no knowledge of the crimes after they occurred, and so was not an accessory after the fact.

The pretrial issue centers on the Fifth Amendment protection against self-incrimination and as set forth in *Miranda v. Arizona*. The issue is whether or not the circumstances surrounding Lee Croddy's interaction with the police amounted to custodial interrogation. If so, the circumstances would require the protection of the Fifth Amendment and would have required the officer to read the defendant the Miranda warnings prior to interrogation.

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We will publish two issues of the quarterly *Bill of Rights in Action* in electronic format only and two issues in print and electronic format. To receive notification of when the electronic edition is available for download, sign up at www.crf-usa.org/bill-of-rights-in-action.