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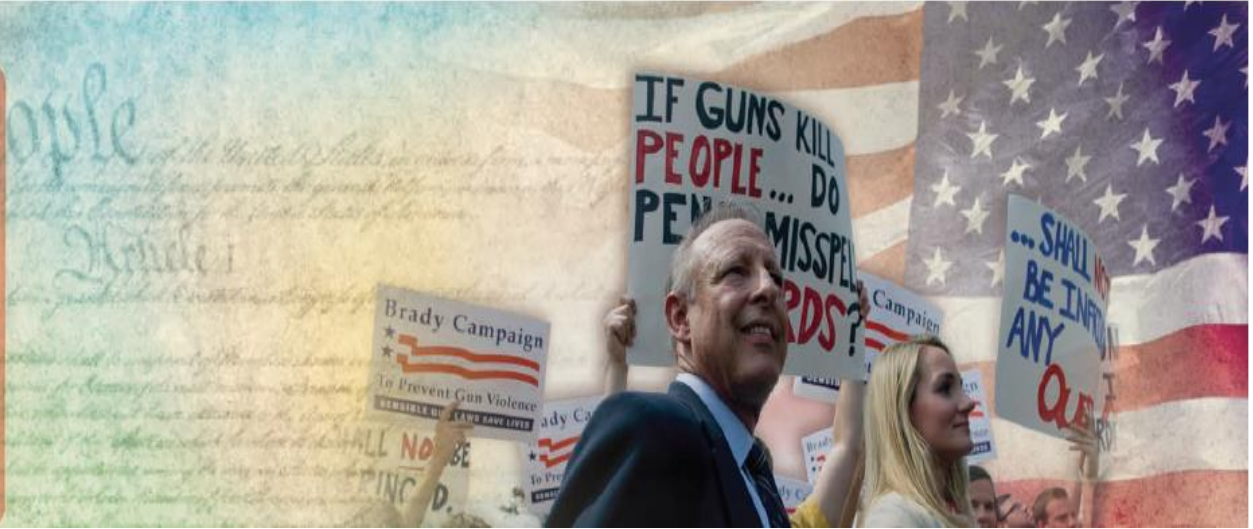
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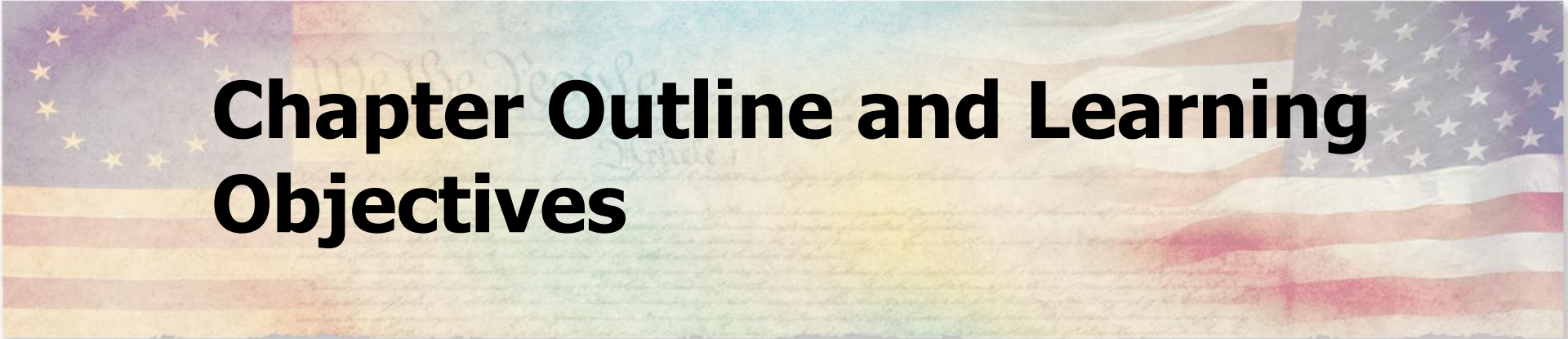
# AMERICAN GOVERNMENT

ROOTS AND REFORM

2011 EDITION



## Chapter 5 Civil Liberties



# Chapter Outline and Learning Objectives

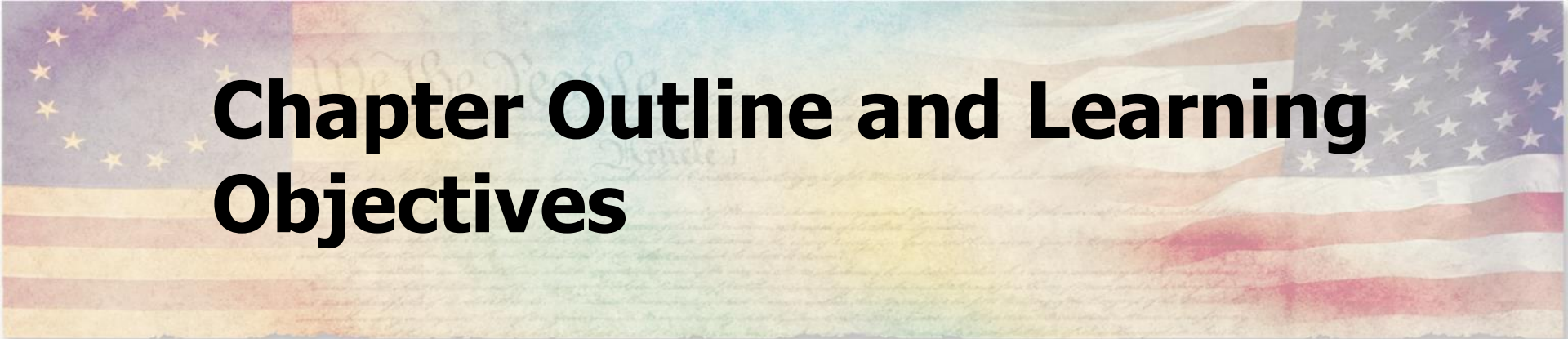
## Roots of Civil Liberties: The Bill of Rights

★ LO 5.1: Trace the constitutional roots of civil liberties.

## First Amendment Guarantees: Freedom of Religion

★ LO 5.2: Describe the First Amendment guarantee of freedom of religion.





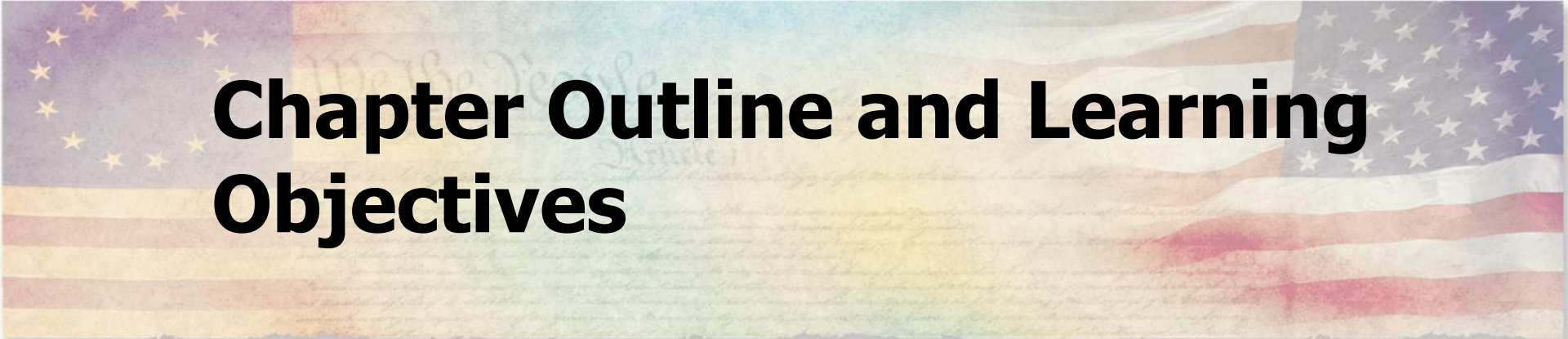
# Chapter Outline and Learning Objectives

## **First Amendment Guarantees: Freedoms of Speech, Press, Assembly, and Petition**

★ LO 5.3: Outline the First Amendment guarantees of freedom of speech, press, assembly, and petition.

## **The Second Amendment: The Right to Keep and Bear Arms**

★ LO 5.4: Summarize changes in the interpretation of the Second Amendment right to keep and bear arms.



# Chapter Outline and Learning Objectives

## **The Rights of Criminal Defendants**

- ★ LO 5.5: Analyze the rights of criminal defendants found in the Bill of Rights.

## **The Right to Privacy**

- ★ LO 5.6: Explain the origin and significance of the right to privacy.

## **Toward Reform: Civil Liberties and Combating Terrorism**

- ★ LO 5.7: Evaluate how reforms to combat terrorism have affected civil liberties.



# Roots of Civil Liberties: The Bill of Rights

LO 5.1: Trace the constitutional roots of civil liberties.

- First ten amendments to Constitution that guarantee specific rights and liberties
- Debate over necessity at Constitutional Convention
- **Ninth Amendment**
  - Not all of the people's rights are mentioned
- **Tenth Amendment**
  - Rights reserved to the states or the people

# The Incorporation Doctrine: The Bill of Rights Made Applicable to the States

- Until twentieth century Bill of Rights did not apply to states
- Observance of Fourteenth Amendment's **due process clause** forced incorporation
- *Gitlow v. New York* (1925)



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# Selective Incorporation and Fundamental Freedoms

- **Selective incorporation** – Most but not all guarantees in Bill of Rights have been made applicable to states
  - *Palko v. Connecticut* (1937)
- **Fundamental freedoms** – Rights essential to order, liberty, and justice and subject to highest standard of review



# First Amendment Guarantees: Freedom of Religion

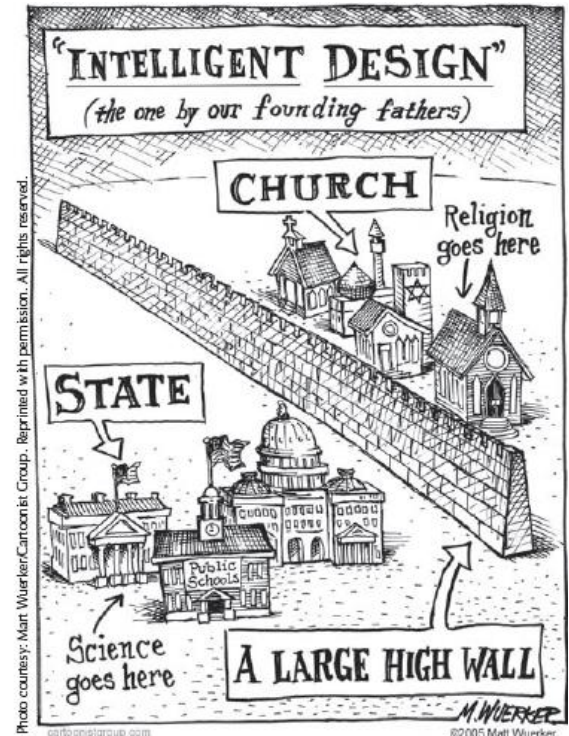
LO 5.2: Describe the First Amendment guarantee of freedom of religion.

- **Establishment clause**

- *Engle v. Vital* (1962)
- *Lemon v. Kurtzman* (1971)
  - Three-part **Lemon test**

- **Free exercise clause**

- Is secular in conflict with one's religion?
  - Peyote use
  - Sacrificing animals
  - The Religious Freedom Restoration Act of 2006



# First Amendment Guarantees: Freedoms of Speech, Press, Assembly, and Petition

LO 5.3: Outline the First Amendment guarantees of and limitations on freedom of speech, press, assembly, and petition.

## Freedoms of Speech and the Press

- Alien and Sedition Acts
  - **Prior restraint**
- Slavery, the Civil War, and rights curtailments
  - *Gitlow v. New York* (1925)
- World War I and anti-governmental speech
  - *Schenck v. U.S.* (1919)
  - **Clear and present danger test**
  - **Direct incitement test**

# Protected Speech and Press

- Limiting prior restraint
  - *New York Times v. U.S.* (1971)
  - *Nebraska press Association v. Stuart* (1976)
- Symbolic Speech
  - *Stromberg v. California* (1931)
  - *Tinker v. Des Moines* (1969)
- Hate Speech
  - *R.A.V. v. City of St. Paul* (1992)





# Unprotected Speech and Press

- Libel and Slander
  - *New York Times v. Sullivan* (1964)
- Fighting words
  - *Chaplinsky v. New Hampshire* (1942)
  - *Cohen v. California* (1971)
- Obscenity
  - *Roth v. U.S.* (1957)
  - *Miller v. California* (1973)



# Freedoms of Assembly and Petition

- *DeJonge v. Oregon* (1937)
- Most controversial freedoms, especially in times of war



# The Second Amendment: The Right to Keep and Bear Arms

LO 5.4: Summarize changes in the interpretation of the Second Amendment right to keep and bear arms.

- Originally written to protect state militias
- Through 1920s few regulations
- *U.S. v. Miller* (1939)
  - Favored regulation
- *D.C. v. Heller* (2008)
  - Favored gun owners



# The Rights of Criminal Defendants

LO 5.5: Analyze the rights of criminal defendants found in the Bill of Rights.

- **Writs of *habeas corpus*, *ex post facto* law, bill of attainder**
- **Fourth and Fifth Amendments**
  - Searches and seizures
  - Self-incrimination and **double jeopardy clause**
  - **Exclusionary rule**
- **Sixth Amendment**
  - Right to counsel and jury trials
- **Eighth Amendment**
  - Cruel and unusual punishment

# The Fourth Amendment and Searches and Seizures

- Fourth Amendment – protects against unreasonable searches and seizures by federal government
  - Warrants – When are they needed?
  - Probable cause
  - Automobiles – When can they be searched?
  - Drug testing – Why is this controversial



# The Fifth Amendment: Self-Incrimination and Double Jeopardy

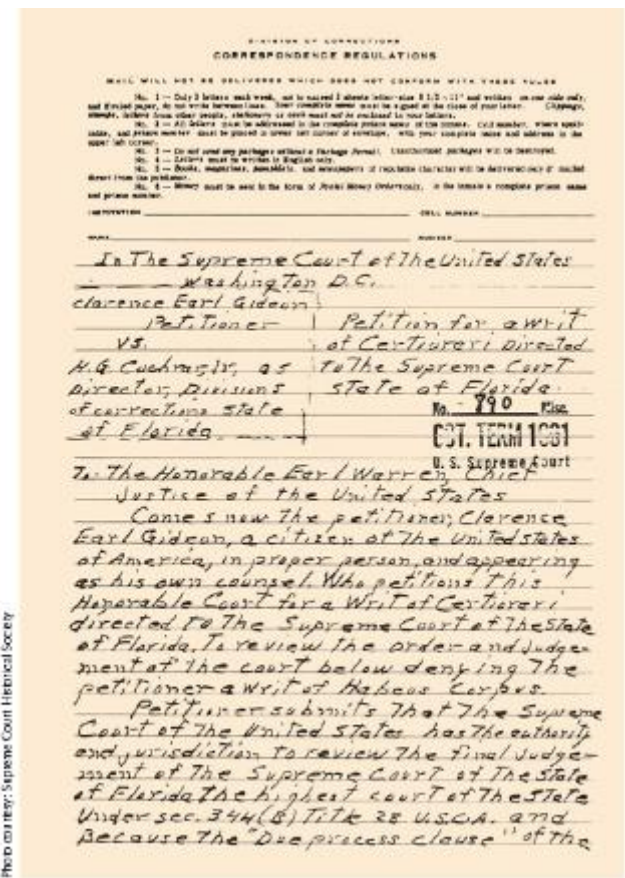
- Fifth Amendment
  - Self-incrimination
  - Double jeopardy
  - *Miranda v. Arizona* (1966)
- Exclusionary rule
  - *Weeks v. U.S.* (1914)



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# The Sixth Amendment and the Right to Counsel and Jury Trials

- Right to counsel
  - *Gideon v. Wainwright* (1963)
- Jury trials
- Public and Speedy Trial



# The Eighth Amendment and Cruel and Unusual Punishment

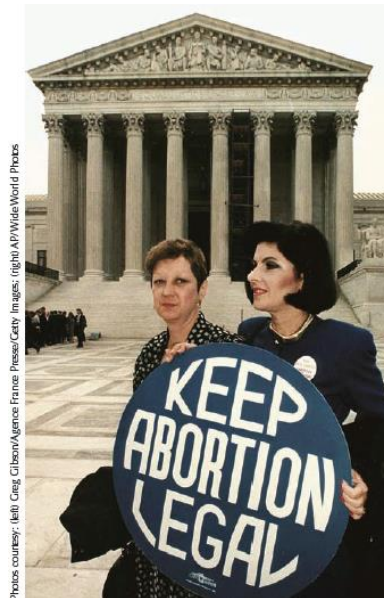
- Cruel and unusual punishment
  - NAACP and the Legal Defense and Educational Fund (LDF)
  - *Furman v. Georgia* (1972)
  - *Gregg v. Georgia* (1976)
  - *McClesky v. Zant* (1991)
- Protecting the wrongfully accused
  - DNA in *House v. Bell* (2006)



# The Right to Privacy

LO 5.6: Explain the origin and significance of the right to privacy.

- Birth Control
  - *Griswold v. Connecticut* (1965)
- Abortion
  - *Roe v. Wade* (1973)
- Homosexuality
  - *Bowers v. Hardwick* (1986)
  - *Lawrence v. Texas* (2003)



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# Toward Reform: Civil Liberties and Combating Terrorism

LO 5.7: Evaluate how reforms to combat terrorism have affected civil liberties.

- The First Amendment
  - USA PATRIOT Act of 2001
- The Fourth Amendment
  - USA PATRIOT Act of 2001
- Due process rights
  - Habeas corpus
  - Sixth Amendment
  - Eighth Amendment



# Table 5.1: How has selective incorporation made the Bill of Rights applicable to the states?

Amendment	Right	Date	Case Incorporated
I	Speech	1925	<i>Gitlow v. New York</i>
	Press	1931	<i>Near v. Minnesota</i>
	Assembly	1937	<i>DeJonge v. Oregon</i>
	Religion	1940	<i>Cantwell v. Connecticut</i>
II	Bear arms	2010	<i>McDonald v. City of Chicago</i>
III	No quartering of soldiers		Not incorporated
IV	No unreasonable searches or seizures	1949	<i>Wolf v. Colorado</i>
	Exclusionary rule	1961	<i>Mapp v. Ohio</i>
V	Just compensation	1897	<i>Chicago, B&amp;Q R.R. Co. v. Chicago</i>
	Self-incrimination	1964	<i>Malloy v. Hogan</i>
	Double jeopardy	1969	<i>Benton v. Maryland</i>
VI	Grand jury indictment		Not incorporated
	Right to counsel	1963	<i>Gideon v. Wainwright</i>
	Public trial	1948	<i>In re Oliver</i>
	Confrontation of witnesses	1965	<i>Pointer v. Texas</i>
	Impartial trial	1966	<i>Parker v. Gladden</i>
	Speedy trial	1967	<i>Klopper v. North Carolina</i>
	Compulsory trial	1967	<i>Washington v. Texas</i>
VII	Criminal trial	1968	<i>Duncan v. Louisiana</i>
	Civil jury trial		Not incorporated
VIII	No cruel and unusual punishment	1962	<i>Robinson v. California</i>
	No excessive fines or bail		Not incorporated

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