

Healthy Tension through Checks and Balances Case Studies

Case Study A: Flag Desecration Amendment

Lexile: 1110
Word Count: 279

Vocabulary

- | | | | |
|----------------|--------------------|-------------|---------------|
| ▶ flag-burning | ▶ desecration | ▶ desecrate | ▶ incorrectly |
| ▶ flex | ▶ outlaw | ▶ veto | ▶ unpopular |
| ▶ bypass | ▶ unconstitutional | | |

Texas v. Johnson (1989)

In 1984, Gregory Johnson burned an American flag outside of Dallas City Hall as a form of protest. He was arrested and charged under a Texas law that banned desecrating the flag. His case went to the Supreme Court, where the justices ruled in a close 5-4 decision that flag-burning was a form of free speech protected by the First Amendment. This ruling in *Texas v. Johnson* (1989) struck down the Texas law and similar laws in 47 other states, declaring them unconstitutional.

Public Opposition and Congress' Response

Many Americans disagreed with the Supreme Court's decision. In response, Congress passed a federal law outlawing the desecration of the flag, which went into effect after President George H.W. Bush chose not to sign or veto the law. A case quickly reached the Supreme Court again after another protester was charged with violating the law, and the same majority ruled the federal law to also be unconstitutional.



Dallas City Hall, the location of Gregory Johnson's 1984 protest.
Highsmith, Carol M. Dallas City Hall, Dallas, Texas. Library of Congress.

Some members of Congress believed the Court had misinterpreted the Constitution. Members of Congress knew the way to bypass the Supreme Court's ruling was to pass a constitutional amendment and then have the states ratify it. They proposed a constitutional amendment. The House of Representatives passed it with the required two-thirds vote. The amendment stated, "The Congress shall have power to prohibit the physical desecration of the flag of the United States." However, the Senate was one vote short of its necessary two-thirds vote.

While the amendment was ultimately never passed despite significant popular support, the events demonstrated Congress flexing its powers in nearly passing an amendment to the Constitution to overturn an unpopular Supreme Court decision.



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Case Study B: President Andrew Jackson's Veto

Lexile: 1360
Word Count: 281

Vocabulary

- ▶ misinterpreted ▶ delegated ▶ veto ▶ interstate ▶ affirmed
- ▶ expired ▶ landmark ▶ disagreed ▶ tax ▶ explicit

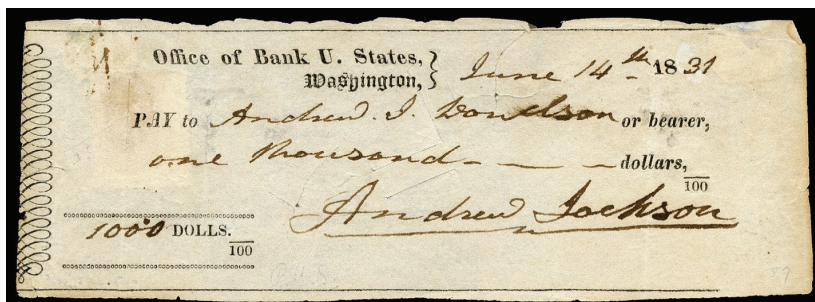
The National Bank Debate

One of the most intense disagreements in the early years of the United States was whether Congress had the power to create a national bank. The Constitution gives Congress the power to collect taxes and regulate trade between the states, but it does not mention a national bank. Some people argued that the Necessary and Proper Clause, which states that Congress has the power to pass laws that will help it carry out the explicit powers it was given, gave Congress the power to create a national bank. A bank would help Congress collect taxes and regulate interstate trade. Others said that the Tenth Amendment, which states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," meant Congress did not have the power to create a bank.

The Second National Bank

President George Washington agreed that the Constitution gave Congress the power to make the bank, and he signed a law establishing the first National Bank in 1791. When

the bank's charter expired, Congress created a Second National Bank in 1816. The Supreme Court affirmed Congress had the power to make a national bank in the landmark decision in *McCulloch v. Maryland* (1819).



Signed check by President Andrew Jackson during his first term.

Jackson, Andrew. Signed check by Andrew Jackson during his first term as the 7th President of the United States. National Numismatic Collection, National Museum of American History. Photo by Godot13, Wikimedia Commons.

However, not everyone accepted this ruling. In 1832, Congress passed a bill to extend the Second National Bank's charter, but President

Andrew Jackson strongly disagreed. He believed the Supreme Court had misinterpreted the Constitution in *McCulloch* and that Congress did not have the authority to make a bank. Jackson used his veto power to block the bill and wrote a statement explaining his decision. His message highlighted his belief in the importance of each branch interpreting the Constitution when exercising its authority, and the veto was an example of the executive checking the legislature.

Text	Vocabulary and Context
It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court...	advocates: supporters precedent: previous decisions
Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled...	acquiescence: agreement
The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others.	
It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision...	

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Case Study C: The Watergate Scandal

Lexile: 1160
Word Count: 284

Vocabulary

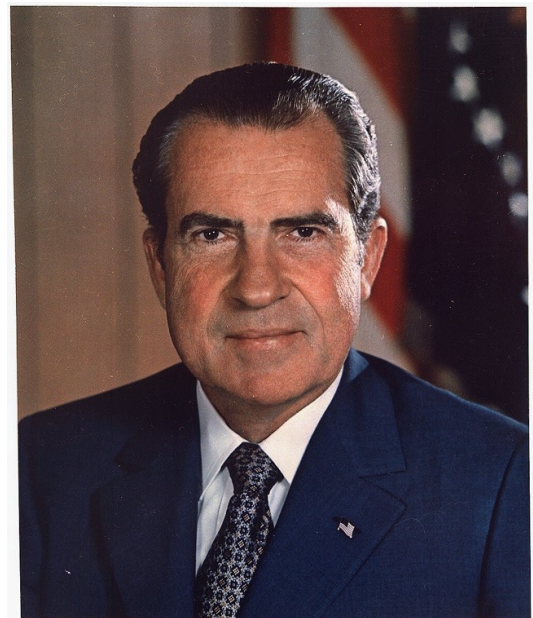
- ▶ re-elected
- ▶ withhold
- ▶ impeach
- ▶ impeachment
- ▶ unanimous
- ▶ judicial
- ▶ obstruction

The Watergate Scandal

In 1972, a group of men were arrested after breaking into the Democratic National Committee headquarters. In the months that followed, evidence showed that the men were connected to the Nixon administration and were trying to find information that could help President Richard Nixon get re-elected. This controversy became known as the Watergate Scandal. Investigators from the Justice Department found out that there were secret recording devices in the Oval Office and asked Nixon to hand over the tapes as part of the investigation. Nixon refused, arguing that, as president, he had constitutional authority to withhold information from judicial investigations for national security reasons.

Nixon v. United States (1974)

The question of whether the president could refuse to provide evidence for a judicial investigation reached the Supreme Court. In a unanimous decision in *Nixon v. United States* (1974), the Court ruled the president did not have unlimited power to withhold evidence and was not above a judicial investigation. It ordered Nixon to hand over the tapes.



President Richard M. Nixon, 1972.

Richard M. Nixon, ca. 1935–1982.
Photograph, June 1, 1972. Department of Defense. National Archives.

Congressional Impeachment

Along with the Supreme Court limiting Nixon's power, Congress also took action. The House of Representatives started the impeachment process months before the Court's ruling, accusing Nixon of obstruction of justice and abuse of power. Nixon knew that he had lost a lot of support, even from members of his own party, and soon resigned from office. Additionally, Congress soon after passed a series of laws limiting executive power—for example, one law set stricter oversight on ensuring the president spent money in the way congressional budgets intended him to. Both the Supreme Court and Congress exercised their constitutional powers to check what they saw as an abuse of power.

