

2022

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# AP<sup>®</sup> United States Government and Politics

## Sample Student Responses and Scoring Commentary Set 1

### **Inside:**

#### **Free-Response Question 3**

- Scoring Guidelines**
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**Question 3: SCOTUS Comparison****4 points**

**A.** Identify the civil liberty that is common to both *Citizens United v. Federal Election Commission* (2010) and *United States v. Eichman* (1990). **1 point**

- The civil liberty is freedom of speech or freedom of expression.

**B.** Explain how the reasoning in *Citizens United v. Federal Election Commission* and *United States v. Eichman* led to a similar holding in both cases.

**Acceptable responses include:**

**One point** for **describing** relevant information about the reasoning in the required Supreme Court case. **1 point**

- In *Citizens United*, the reasoning of the court led it to hold that political advertisements and communications were a protected form of free speech.

**OR**

**Two points** for correctly **explaining** how the reasoning in both cases led to a similar holding. **OR**

**OR**  
**2 points**

- In *Citizens United*, the reasoning of the court led it to hold that political advertisements and communications were a protected form of free speech. In *Eichman*, the court reasoned that burning a flag in protest was symbolic speech. In both cases, the court held that the action was a form of speech that is protected by the First Amendment.

**C.** Explain how those unhappy with the precedent established in *Eichman* can use a constitutional process to have it overturned. **1 point**

**Acceptable explanations include the following:**

- States can ratify an amendment that would invalidate the decision.
- A constitutional convention can be called to propose an amendment that would invalidate the decision and then state constitutional conventions can ratify it.

**Total for question 3 4 points**

● **Important:** Completely fill in the circle that corresponds to the question you are answering on this page.

Question 1

Question 2

Question 3

Question 4



Begin your response to each question at the top of a new page. Do not skip lines.

A. The civil liberty that is common in *Citizens United v. FEC* and *United States v. Eichman* is the first amendment right to freedom of speech.

B. In *Citizens United v. FEC*, the Supreme Court ruled that soft money was allowed, and this allowed for Super PACs that could donate unlimited amounts of money to parties. The Court reasoned that this was allowed because money is a form of free speech, and therefore, it cannot be restricted. In *U.S. v. Eichman*, the Court reasoned that burning the flag was a form of symbolic speech and political protest. Therefore, since political protest is included as a right in the first amendment, burning the flag is allowed. Both cases had reasonings that proved how money or burning the flag was part of their first amendment rights, which caused the Supreme Court to both agree with them.

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Important: Completely fill in the circle that corresponds to the question you are answering on this page.

Question 1

Question 2

Question 3

Question 4



Begin your response to each question at the top of a new page. Do not skip lines.

C. Those unhappy with the precedent in *Eichman* may pass an amendment to make the ruling unconstitutional. Those in Congress may pass a bill with  $\frac{2}{3}$  vote in each house, and the states may ratify the amendment with  $\frac{3}{4}$  vote. If the amendment prohibits flag burning, the Supreme Court will have no choice but to create a new precedent and overturn their previous ruling since the Supreme Court must follow the Constitution.

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Important: Completely fill in the circle that corresponds to the question you are answering on this page.

Question 1

Question 2

Question 3

Question 4

Begin your response to each question at the top of a new page. Do not skip lines.

A. The civil liberty present in both *Citizens United v. FEC* and *US v. Eichman* is the free speech clause under the first amendment.

B. *Citizens United v. FEC* focused on the usage of political videos and ads during the election of 2008 against Hillary Clinton. The group that published these videos, *Citizens United*, was charged for defaming Clinton before the election could start. The case went to the Supreme Court, where it was ruled that interest groups have the liberty to post such videos under the first amendment and its freedom of speech clause regarding these advertisements. Both cases establish a ruling in which the Supreme Court rules in favor of the groups charged and strengthen the clause of the first amendment regarding the freedom of speech in both cases.

C. Those unhappy with the precedent set in *Eichman* could use the constitutional process of setting up a new amendment. They could form a group centered around overturning this precedent by creating a new amendment to garner enough support to pass in Congress.

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Important: Completely fill in the circle that corresponds to the question you are answering on this page.

Question 1

Question 2

Question 3

Question 4

Begin your response to each question at the top of a new page. Do not skip lines.

A) Free speech granted by the First amendment is the civil liberty that is common to both Citizens United v. Federal Election Commission (2010) and United States v. Eichman (1990).

B) The reasoning in Citizens United v. Federal Election Commission and United States v. Eichman led to a similar holding in both cases by confirming the broad nature of the civil liberties granted to United States citizens under the First amendment. The reasoning used in both cases expanded the limits of the First amendment, leading to similar holdings.

C) Those unhappy with the precedent established in Eichman can use the amendment process to have it overturned. By passing an amendment through Congress, the power of the Supreme Court can be checked and the ~~previous~~ decision in Eichman is effectively overturned.

Use a pen with black or dark blue ink only. Do NOT write your name. Do NOT write outside the box.

### Question 3

**Note:** Student samples are quoted verbatim and may contain spelling and grammatical errors.

#### Overview

This SCOTUS Comparison FRQ asked the students to read a summary of a nonrequired case (*United States v. Eichman*) and compare it to a course required case (*Citizens United v. FEC*). Students were given several tasks, including identifying the civil liberty that was common to both cases. Additionally, students were asked to explain how the reasonings in *Citizens United v. FEC* and *United States v. Eichman* led to similar holdings. Lastly, the students were required to “explain how those unhappy with the precedent established in *Eichman* can use a constitutional process to have it overturned.”

These increasingly challenging tasks involved a thorough understanding of the reasoning in *Citizens United v. FEC* along with the skill of comparison between the required and the nonrequired case. Additionally, students were asked to integrate relevant course concepts into the Court case comparison.

#### Sample: 3A

##### Score: 4

In part A the response earned 1 point for correctly identifying “freedom of speech” as a civil liberty.

In part B the response earned 2 points. The first point was earned for sufficiently explaining the reasoning in *Citizens United*, including “allowed for Super PACs that could donate unlimited amounts of money to parties.” The response earned a second point by explaining the reasoning in *Eichman*, “the court reasoned that burning the flag was a form of symbolic speech and political protest,” and how it led to a similar holding in both cases: “Both cases had reasonings ... their first amendment rights.”

In part C the response earned 1 point because the explanation of the amendment process includes the “2/3 vote in each house” of Congress and “states ... ratify the amendment with a  $\frac{3}{4}$  vote.”

#### Sample: 3B

##### Score: 2

In part A the response earned 1 point for correctly identifying free speech as a civil liberty.

In part B the response earned 1 point for accurately explaining the reasoning in *Citizens United*: “The case went to the Supreme Court, where it was ruled ... regarding these advertisements.” The response did not earn a second point because it fails to explain the reasoning in the *Eichman* case as it relates to the required case.

In part C the response did not earn a point. “[C]reating a new amendment” does not sufficiently explain the amendment process.

### Question 3 (continued)

**Sample: 3C**

**Score: 1**

In part A the response earned 1 point. It correctly identifies “[f]ree speech granted by the First amendment” as a civil liberty common to both cases.

In part B the response did not earn a point because “both cases by confirming ... under the first amendment” does not apply to *Citizens United*. Also, the response does not discuss the reasoning in the *Eichman* case, nor does it explain how the reasoning used in both cases led to similar holdings.

In part C the response did not earn a point because “[b]y passing an amendment through Congress ... is effectively overturned” does not fully describe the Constitutional process.