
AP[®] United States Government and Politics

Sample Student Responses and Scoring Commentary Set 2

Inside:

Free-Response Question 3

- ☒ **Scoring Guidelines**
- ☒ **Student Samples**
- ☒ **Scoring Commentary**

Question 3: SCOTUS Comparison**4 points**

A. Identify the civil liberty that is common to both *Schenck v. United States* (1919) and *Cohen v. California* (1971). **1 point**

- Freedom of speech

B. Explain how the facts in *Schenck v. United States* and *Cohen v. California* resulted in different holdings. **1 point**

Acceptable responses include:

One point for **describing** relevant information (facts or holding) about the required Supreme Court case.

- Schenck was found guilty of violating the Espionage Act.
- In *Schenck v. United States*, a man was arrested for distributing anti-war pamphlets that called for people to disobey the draft.
- The Supreme Court held that Congress has the power to prevent dangerous speech.
- When ruling in favor of the government, the Supreme Court held that the First Amendment does not protect speech that presents a clear and present danger to public welfare.

OR

Two points for correctly **explaining** how the facts of both cases resulted in different holdings.

OR
2 points

- The speech in *Schenck* was a threat, so the Court held that it was not protected, while the Court held that the speech in *Cohen* was protected because, while it was offensive to some, it did not pose a security threat.
- Both cases involved speech in protest of a war, but the Court held in *Cohen v. California* that the government could not limit offensive speech whereas in *Schenck v. United States* it held that speech that presents a clear and present danger can be limited by the government.
- While both cases involve speech, *Schenck* encouraged citizens to act against the government, which the Court held was not protected by the First Amendment, while *Cohen* was simply expressing his opinion, which the Court held was protected by the First Amendment.

C. Explain how the decision in *Cohen v. California* reflects the democratic ideal of limited government. **1 point**

Acceptable explanations include the following:

- The decision in *Cohen* protects an individual's right to wear a jacket with offensive speech, which constrains the government's power to censor speech.
- The decision in *Cohen* upheld civil liberties meant to protect against government overreach.

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 to both *Schenck v. United States* (1919) and *Cohen v. California* (1971) is the right to free speech, protected by the First Amendment.
- B. The facts in *Schenck v. United States* and *Cohen v. California* resulted in different holdings because in *Schenck v. United States*, Schenck was distributing material that arguably incited violence, chaos, or a "clear and present danger." This type of speech is not necessarily protected by the First Amendment because of time, place, and manner restrictions, as found by the Supreme Court. The Court held differently in *Cohen v. California* because Cohen (and the language on his jacket) was not promoting violence or inciting a clear and present danger, only expressing his opinions. Obscene language or imagery can be protected by the First Amendment because, as Justice John Marshall Harlan concluded, vulgarity is subjective and the government cannot use it to try to limit any specific ideology or opinion.
- C. The decision in *Cohen v. California* reflects the democratic ideal of limited government because it holds that the individual liberty to express one's opinion should be protected from a potentially tyrannical government that may try to suppress the varying ~~political~~ political views of its citizens. Limited government supports the idea that the government cannot overstep its authority (that is originally derived from the people) and try to limit individual ideologies.

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. Schenck v. United States (1919) and Cohen v. California (1971) both have the civil liberty of Freedom of Speech. Both cases are based on protests using the First Amendment's right of Freedom of Speech.

B. In Schenck v. United States a police man ~~was~~ committed violent acts during his job. People did not agree with this and started protesting it outside his house, followed him, etc. The leader of this was holding very vulgar signs and threatening the cop. This is different from the facts of Cohen v. California because in that case there are no threats being made and the peace is not disturbed. In the facts of both cases we can see a clear difference.

C. The decision in Cohen v. California reflects the ideal of limited government because the decision is towards Freedom of Speech. The government can't get someone in trouble because they don't agree with their opinions. This was a violation of Cohen's Freedom of

- **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.

Speech. As you can see the ideal of limited government is reflected in this case as the government cannot arrest someone for "expressing unpopular views."

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 demonstrated in *Schenck v. United States* and *Cohen v. California* is freedom of expression.

B. These two court cases resulted in different outcomes because in the case of ~~Schenck~~ *Schenck* he was actually disrupting the peace, while in the case of *Cohen* he simply wore a jacket. Another fact that may have influenced the outcome could be the time each of these court cases took place. *Schenck* took place in 1919 while *Cohen* took place in 1971. These two most likely had two entirely different courts with entirely different views.

C. The decision in *Cohen v. California* reflects the idea of limited government because it affirms our rights as individuals to do what we want so long as we are not ~~truly~~ truly disrupting anything.

Question 3

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

Overview

This SCOTUS Comparison question provided a summary of a nonrequired case (*Cohen v. California*) and expected responses to compare the non-required case to a course-required case (*Schenck v. United States*). In part A responses were expected to identify the civil liberty that was common to both cases. In part B responses needed to explain how the relevant facts in *Cohen* and *Schenck* led to different holdings. In part C the responses were required to explain how the decision in *Cohen* reflects the democratic ideal of limited government. These increasingly challenging tasks required a thorough understanding of the holdings of *Schenck* and *Cohen*, along with accurately comparing key facts between the two cases. Additionally, responses were expected to integrate relevant course concepts into the court case comparison.

Sample: 3A

Score: 4

The response earned 1 point in part A. The response states “The civil liberty that is common to both ... is the right to free speech.”

The response earned 2 points in part B. The response states “Schneck was distributing material that arguably incited violence, chaos, or a ‘clear and present danger.’” In addition, the response notes “The court held differently in *Cohen v. California* because Cohen (and the language on his jacket) was not promoting violence or inciting a clear and present danger, only expressing his opinions.” The response accurately explains how the facts of both cases resulted in different holdings.

The response earned 1 point in Part C. The response states “The decision in *Cohen v. California* reflects the democratic ideal of limited government because it holds that the individual liberty to express one’s opinion should be protected from a potentially tyrannical government that may try to suppress the varying political views of its citizens.” This is a sufficient explanation of the connection to the ideal of limited government.

Sample: 3B

Score: 2

The response earned 1 point in part A. The response states “Both cases are based on ... the First Amendment, right of freedom of speech.” This statement correctly identifies the civil liberty common to both cases.

The response earned 0 points for part B. The response does not explain how the facts in both cases led to different holdings nor does it describe relevant information about the required case.

Question 3 (continued)

The response earned 1 point in part C. The response states “the government cannot arrest someone for ‘expressing unpopular views.’” This is a sufficient explanation for how *Cohen v. California* reflects the ideal of limited government.

Sample: 3C

Score: 1

The response earned 1 point in part A. The response states “The Civil liberty that ... is freedom of expression.”

The response earned 0 points in part B. The response does not accurately explain how the facts of both cases resulted in different holdings. While the response mentions “Schneck he was actually disrupting the peace, while in the case of Cohen he simply wore a jacket” this is not an accurate description of either a fact or a holding from the required Supreme Court case.

The response earned 0 points in part C. The response does not explain the concept of limited government as reflected in *Cohen v. California*. Although the response mentions “affirms our rights as individuals,” it does not explain how these rights relate to the concept of limited government.