

A-LEVEL

Government and Politics

GOV4A The Government of the USA
Mark scheme

June 2016

Version: 1.0 Final

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from aqa.org.uk

CRITERIA FOR MARKING AS/A2 GOVERNMENT AND POLITICS

Introduction

AQA's revised Government and Politics specification has been designed to be objectives-led in that questions are set which address the assessment objectives published in the specification. The assessment objectives for A-level and AS are the same, but the weightings are different at AS and A2. Details of the weightings are given in Section 4.2 of the specification.

The schemes of marking reflect these objectives. The mark scheme which follows is of the levels-of-response type, showing that students are expected to demonstrate their mastery of the skills required in the context of their knowledge and understanding of Government and Politics. Mark schemes provide the necessary framework for examiners but they cannot cover all eventualities. Students should be given credit for partially complete answers. Where appropriate, students should be given credit for referring to recent and contemporary developments in Government and Politics.

Consistency of marking is of the essence in all public examinations. It is therefore of vital importance that examiners apply the mark scheme as directed by the Principal Examiner in order to facilitate comparability with the marking of other options.

Before scrutinising and applying the detail of the specific mark scheme which follows, examiners are required to familiarise themselves with the general principles of the mark scheme as contained in the Assessment Matrix.

There are no limits to the areas of knowledge that students may feel able bring to the discussion. Therefore the specification of requirements outlined in the mark schemes can only be indicative. Students are not expected to include all the material presented in order to access the full range of available marks. At the same time they may successfully include material from their particular studies which is not indicated in the scheme.

Using a levels-of-response mark scheme

Good examining is about the consistent application of judgement. Mark schemes provide a framework within which examiners exercise their judgement. This is especially so in subjects like Government and Politics, which in part rely upon analysis, evaluation, argument and explanation. With this in mind, examiners should use the Assessment Matrix alongside the detailed mark scheme for each question. The Assessment Matrix provides a framework ensuring a consistent, generic source from which the detailed mark schemes are derived. This supporting framework ensures a consistent approach within which students' responses are marked according to the level of demand and context of each question.

Examiners should initially make a decision about which level any given response should be placed in. Having determined the appropriate level the examiners must then choose the precise mark to be given within that level. In making a decision about a specific mark to award, it is vitally important to think first of the mid-range within the level, where that level covers more than two marks. Comparison with other students' responses to the same question might then suggest whether the middle mark is unduly generous or severe.

In making decisions away from the middle of the level, examiners should ask themselves questions relating to student attainment, including the quality of language. The more positive the answers, the higher should be the mark awarded. We want to avoid ‘bunching’ of marks.

Levels mark schemes can produce regression to the mean, which should be avoided. A student’s script should be considered by asking ‘Is it:

- precise in its use of factual information?
- appropriately detailed?
- factually accurate?
- appropriately balanced or markedly better in some areas than others?
- generally coherent in expression and cogent in development (as appropriate to the level awarded)?
- well-presented as to general quality of language?’

The overall aim is to mark positively, giving credit for what students know, understand and can do.

A2 GOVERNMENT AND POLITICS
GENERIC MARK SCHEME for questions with a total of 10 marks

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (4 marks) The student demonstrates a comprehensive knowledge and understanding of political concepts, institutions and processes. The student fully addresses the requirements of the question and provides developed and effective to comprehensive interpretation. The answer also provides clear to accurate evidence and, where appropriate, good to excellent examples to illustrate points made.</p>	<p>Level 4 (4 marks) The student applies an excellent range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	<p>Levels 3–4 (2 marks) The student communicates clearly and effectively in a sustained and structured manner, using appropriate political vocabulary. There are few, if any, errors of spelling, punctuation and grammar, and the response should be legible. The answer has a clear sense of direction, is focused on the question and, where appropriate, has a conclusion which flows from the discussion.</p>
<p>Level 3 (3 marks) The student demonstrates good knowledge and understanding of political concepts, institutions and processes. The student clearly addresses the requirements of the question and provides sound interpretation and contextual awareness. The answer includes good examples to illustrate points made.</p>	<p>Level 3 (3 marks) The student applies a good range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	
<p>Level 2 (2 marks) The student demonstrates limited knowledge and understanding of political concepts, institutions and processes. The student makes a limited attempt to address the requirements of the question and provides little to partial, but reasonably effective, interpretation. Answers offer limited evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 2 (2 marks) The student applies a limited range of concepts and makes limited use of political theory or ideas in developing an explanation or argument.</p>	<p>Levels 1–2 (1 mark) The student communicates explanations or arguments with limited clarity and effectiveness, using limited political vocabulary. The answer may lack either a clear focus on the question or a sense of direction. There are frequent errors of spelling, punctuation and grammar, and legibility may be a problem. A conclusion, where appropriate, may be offered but its relationship to the preceding discussion is modest or implicit.</p>
<p>Level 1 (1 mark) The student demonstrates little knowledge and understanding of political concepts, institutions and processes. The student makes little attempt to address the requirements of the question and provides little interpretation. Answers offer little evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 1 (1 mark) The student applies few concepts and makes little use of political theory or ideas in developing an explanation or argument.</p>	
<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>

A2 GOVERNMENT AND POLITICS
GENERIC MARK SCHEME for questions with a total of 30 marks

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (10–12 marks)</p> <p>The student demonstrates a comprehensive knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them.</p> <p>A synoptic approach is fully developed, drawing appropriately on knowledge, perspectives and examples from a wide range of studies in government and politics.</p> <p>The answer fully addresses the requirements of the question and demonstrates excellent contextual awareness.</p> <p>The answer includes excellent examples to illustrate points made.</p> <p>The answer includes detailed and comprehensive interpretations or explanations, as well as accurate evidence and relevant examples, to illustrate points made.</p>	<p>Level 4 (10–12 marks)</p> <p>The student displays excellent awareness of the implications and demands of the question. There is an excellent and sustained focus on the specific question asked. There is clear and full evaluation of political institutions, processes and behaviour, which displays a sophisticated awareness of differing viewpoints and recognition of issues.</p> <p>Appropriate parallels and connections are clearly identified, together with well-developed comparisons. A wide range of concepts is used and developed.</p>	<p>Level 4 (6 marks)</p> <p>The student communicates structured and sustained arguments, explanations and conclusions with clarity. Excellent use is made of political vocabulary to construct cogent and coherent arguments and explanations.</p> <p>The response should be legible, with few, if any, errors of spelling, punctuation and grammar. The answer has a clear sense of direction, culminating in a conclusion that flows from the preceding discussion.</p>
<p>Level 3 (7–9 marks)</p> <p>The student demonstrates sound knowledge and understanding of political concepts/theories/ institutions and processes and the relationships between them.</p> <p>A synoptic approach is well developed using a range of knowledge, perspectives and examples gained elsewhere in the study of government and politics.</p> <p>The answer clearly addresses the requirements of the question and demonstrates sound contextual awareness.</p> <p>The answer includes developed and effective interpretations or explanations and also clear evidence and good examples to illustrate points made.</p>	<p>Level 3 (7–9 marks)</p> <p>The student displays sound awareness of the implications and demands of the question. There is a clear focus on the question. There is a sound evaluation of political institutions, processes and behaviour, which displays good awareness of differing viewpoints and recognition of issues. There is good recognition of parallels and comparisons. Appropriate concepts are used and developed.</p>	<p>Level 3 (4–5 marks)</p> <p>The student communicates arguments, explanations and conclusions well. Good use is made of political vocabulary to construct clear arguments and explanations.</p> <p>The response should be legible but there may be occasional errors of spelling, punctuation and grammar.</p> <p>The student produces an answer with a conclusion linked to the preceding discussion.</p>

GENERIC MARK SCHEME for questions with a total of 30 marks (continued)

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 2 (4–6 marks)</p> <p>The student demonstrates outline knowledge and understanding of political concepts/theories/institutions and processes and some awareness of the relationships between them. The answer makes a limited attempt to address the question and demonstrates contextual awareness covering part of the question.</p> <p>An attempt to develop a synoptic approach is made, using a limited range of knowledge, perspectives and examples gained more broadly in the study of government and politics.</p> <p>The answer includes a partial and reasonably effective attempt at interpretation or explanation with some examples to illustrate points made.</p>	<p>Level 2 (4–6 marks)</p> <p>The student displays little awareness of the implications and demands of the question, resulting in a restricted focus. There is a limited evaluation of political institutions, processes and behaviour which displays a partial awareness of differing viewpoints and issues.</p> <p>There is some recognition of basic parallels and comparisons. Arguments and explanations are undeveloped, with a limited use of concepts.</p>	<p>Level 2 (2–3 marks)</p> <p>The student communicates arguments and conclusions adequately, with a limited use of political vocabulary.</p> <p>There are frequent errors of spelling, punctuation and grammar and legibility may be a problem.</p> <p>A conclusion is offered but its relationship to the preceding discussion may be modest or implicit.</p>
<p>Level 1 (1–3 marks)</p> <p>The student demonstrates a slight and incomplete knowledge and understanding of political institutions and processes and a limited awareness of the relationships between them.</p> <p>A very limited attempt at synopticity is made, sometimes using superficial or inaccurate knowledge, perspectives and examples cited from elsewhere in their study of government and politics.</p> <p>There is little attempt to address the requirements of the question. There is only superficial awareness, if any, of the context of the question, with little interpretation and few, if any, examples often inaccurately reported or inappropriately used.</p>	<p>Level 1 (1–3 marks)</p> <p>The student displays little awareness of the implications and demands of the question, and focus is lacking. Evaluation of political institutions, processes and behaviour is superficial.</p> <p>Analysis shows little awareness of differing viewpoints and issues.</p> <p>There is little, if any, recognition of parallels and comparisons. Arguments, explanations and use of concepts are superficial and naïve.</p>	<p>Level 1 (1 mark)</p> <p>The answer relies upon narrative which is not fully coherent. There is little or no use of political vocabulary.</p> <p>Errors in spelling, punctuation and grammar may be intrusive and the response may not be legible.</p> <p>A conclusion, if present, is not adequately related to the preceding discussion.</p>
<p>0 marks</p> <p>No relevant response.</p>	<p>0 marks</p> <p>No relevant response.</p>	<p>0 marks</p> <p>No relevant response</p>

Topic 1: The Constitutional Framework of US Government

0 1 Examine the concept of federalism in the USA.

[10 marks]

Federalism is a key concept in the US Constitution and it is expected that most students will define it and explain why it was adopted in 1787. In order to access marks at even the lowest level, students need to have at least a basic understanding of what federalism is, a form of power-sharing arrangement between the national government and the states. Students may then state it was a compromise between unitary government under the British and the weaknesses of original confederation. Some answers may refer to the enumerated, concurrent and reserved powers and/or the 10th Amendment. In essence it is another check and balance.

While some may explore the strengths and weaknesses of such a system, students in Level 3 and 4 would be expected to show some appreciation of the changing dynamics of federalism, from the original dual federalism until the 1930s and its replacement by co-operative and regulated federalism which were then themselves challenged by new federalism from the 1970s. The best responses are likely to acknowledge that both Bush and Obama still largely deliver big government very much akin to regulated federalism of the past. Examples may be cited such as ‘No Child Left Behind’ or the ARRA or Obamacare.

Some may use terms like ‘layer’ or ‘marble cake’ federalism and/or refer to the right of each state to have two senators. Again a few may refer to the contradictory nature of the US public, largely hostile to the big government it demands during times of national crisis. Some may refer to the ‘elastic clause’ and the role of the Supreme Court in clashes between state and federal governments.

0 2 To what extent do the separation of powers **and** checks and balances limit government in the USA?

[30 marks]

It would be expected that most students will explain both separation of powers and checks and balances as central to the relationship between the three branches of the federal government. On separation, students may refer to Montesquieu or Locke and even Madison’s ‘ambition will counter ambition’. Thus, as students describe the presidency, the bicameral Congress and the Supreme Court, they should make the point that the aim of the Framers was to create a limited but effective central government in a federal republic. They should then refer to the need for checks and balances in order to make the branches work together to produce a system of ‘separated institutions sharing powers’. (Neustadt) So government is based on a wide consensus, with interdependence between the branches. Most decisions must have the endorsement of more than one branch as a bulwark against tyranny. Level 2 responses will be those limited to essentially a description of these constitutional arrangements.

In tackling successfully ‘to what extent’ both have limited government, Level 3 and 4 responses will use recent examples to show the continued relevance of both concepts. Thus some might cite that Obama, Clinton and Kerry all had to resign from the legislature

to serve in the executive branch. The best responses are likely to point out that branches are challenged when they drift into the work of another such as the Supreme Court's ruling against the Line Item Veto Act in 1998. With checks and balances, it can be argued that they have proven to be effective in several ways; the judicious use of the presidential veto, the role of judicial review and the very occasional use of impeachment.

Top students may explain how the Senate's special powers of advice and consent are all part of the staple diet of Washington politics. Very good responses will then tackle the more difficult evaluation as to how far they have not limited developments in the federal government. Neither separation nor checks and balances have prevented the expansion of the presidency and the scope of the federal government. Again, both the executive and the legislature have shown reluctance in challenging the role of the Supreme Court. The best responses are likely to argue that separation of powers and checks and balances have been modified by the rise of political parties, arguably a check in their own right. Nevertheless, party politics can produce two scenarios, united government as under Bush from 2002 to 2006 when Washington was described as a one party town, with a conservative Court and Dick Cheney using the breach in separation to cast his tie-breaking vote in the Senate.

The best responses are also likely to show awareness that a more regular occurrence in recent decades is that of divided government, citing recent examples of conflict between the branches and within the legislature. The Framers wanted a degree of conflict to produce consensus but arguably not the gridlock and occasional shutdown of hyper-partisanship both within Congress and between the legislature and the White House.

There may be synoptic references to the fusion of government in UK and executive dominance versus parliamentary sovereignty in an uncodified system with few formal checks.

AO3 marks on this question must be awarded to reflect the extent to which an answer is clearly expressed, is well-structured, leads to a conclusion that is consistent with the preceding knowledge and analysis and uses relevant political vocabulary, including theories and concepts, as identified in the mark scheme.

Topic 2: The Legislative Branch of Government: US Congress

0 3 Explain the importance of the advice and consent powers of the US Senate.

[10 marks]

The US Constitution outlines a number of powers that are exclusive to the Senate. In Article II, Section 2, some presidential powers are described as being subject to the powers of advice and consent of the Senate. Students should explain that these focus on two specific areas, the confirmation of most top presidential appointments and the ratification of treaties. Some may explain that a simple majority of senators is required for a nomination to be confirmed while for a treaty, a two-thirds vote of the Senate is constitutionally required.

Level 2 answers are likely to be limited to a basic description of such powers but better responses will recognise their significance as a check and balance on executive power. Students may refer to examples of treaties that have been rejected, seven in total in the twentieth century.

Again it may be argued that most appointments go through without being blocked and that, in practice, this power is not significant but top answers may argue this is because the president is normally careful to nominate figures who are unlikely to prove controversial to senators. Some may refer to the historic rejection of Bork and the politicisation of judicial appointments.

Top answers may refer to presidential recess appointments and executive agreements to circumvent senatorial approval and how such manoeuvres reflect the nature of divided government. Some may be aware of a Supreme Court ruling against Obama's recess appointments in 2012.

0 4 Assess the role of political parties in the US Congress.

[30 marks]

Traditionally, the political parties have been seen as less of a significant force in the US legislature than in the United Kingdom. The main reasons for this are separation of the powers and the staggered electoral cycles. Thus the US Congress does not fulfil the role of sustaining the executive in office and in the past, party cohesion in Congress has not been strong. In particular, the whips in Congress have never been as effective in maintaining party discipline as their counterparts in Westminster. Bipartisanship and cross-party co-operation were not uncommon. Sometimes legislation has been co-sponsored by figures from both the Democrat and Republican parties in order that it could gain widespread congressional support such as the McCain–Feingold reforms to campaign finance.

Further limitations on the party system may be seen through the work of congressional committees, which demonstrate that much power is decentralised to influential committee chairs. In this respect, congressional party leaders have limited powers. Members of Congress, particularly those in the House of Representatives, have often been more influenced by the demands of their constituents than by the wishes of their party.

One reason for levels of bipartisanship in the past was that relatively few issues which divided the parties along ideological or party lines and better students will explore how this has changed over the last thirty years. Thus Congress has become progressively more divided along party lines citing examples from the 1990s to the Obama administration. Thus, given such developments in ideological differences and greater readiness to vote along party lines, students may develop the argument that parties are now more important and significant in Congress.

Yet the best responses are likely to be able to show a counter-evaluation of the above points. G W Bush and Senator Kennedy worked together on 'No Child Left Behind' while Obama's problems in getting his reforms through Congress are to some extent caused by dissent from within his own party and not just from the partisan behaviour of the Republicans. Students should be able to identify the importance of ideological groupings within each of the parties in Congress, which indicates that the differences within the political parties in Congress are as significant as those between them and how Congressmen may increasingly distance themselves from a lame-duck president of their own party in the build-up to a federal election. Some candidates may contrast the role of party to the demands of constituents and/or special interest groups.

Synoptic analysis with the UK may be usefully deployed in responses but it should not dominate them. The focus must be on Congress.

AO3 marks on this question must be awarded to reflect the extent to which an answer is clearly expressed, is well-structured, leads to a conclusion that is consistent with the preceding knowledge and analysis and uses relevant political vocabulary, including theories and concepts, as identified in the mark scheme.

Topic 3: The Executive Branch of Government

- 0 5** Explain the significance of the 'spoils system' in the executive branch of US government. **[10 marks]**

In the US, a spoils system or patronage system is employed where a party or president, after winning an election, appoints members of the administration and the federal bureaucracy. This is in contrast to a merit system which is independent of political activity as in the UK Civil Service. This gives the president, at least in theory, enormous powers of patronage over appointments to the Cabinet, EOP and other key posts in the federal government although most but not all are subject to Senate confirmation. However, since 1883, the majority of federal jobs are awarded on merit.

Students should at the very least be able to define the term in the context of the US administration and some will cite appropriate examples, probably largely in respect of Cabinet Secretaries and influential members of EOP. Better responses will explain the arguments in its favour as a way of ensuring presidents loyal and co-operative employees. Some may argue this is of special importance given the two-term limit of the 25th Amendment.

Others may argue it can destabilise government but a few may know that presidents can renew the appointments of their predecessors where individuals appear to be working well. Better responses may argue presidential choice can be tempered by the need to secure Senate approval.

The best responses are likely to point out that despite the system, presidents then appear to distrust some of their appointees, both Cabinet Secretaries and top bureaucrats and rely on EOP, sometimes resulting in duplication and friction within the government machine.

- 0 6** 'The reality of the modern presidency is one of vulnerability not strength.' Discuss. **[30 marks]**

In order to successfully answer this question, students should be able to engage with the ongoing debate about the nature of presidential power. Some may begin with the constitution itself and argue that the Framers were keen to limit executive power as much as some were to limit the power of the federal government in general. Thus some may argue that Article 2 gave and gives presidents more freedom of manoeuvre in foreign (but not domestic) policies, the so-called bifurcated presidency and/or argue that the president's power is limited to that of persuasion.

Most students will then briefly examine the expansion or 'stretching' of presidential power from Roosevelt to Nixon and some may employ references to the term 'imperial presidency'. The better responses are likely to identify a sea change in the role and power of the federal government in domestic issues from the 1930s. Sound responses may explore the way successive presidents have overcome conventional restrictions on the executive in the field of foreign policy. Level 3 and 4 students will also examine those presidencies where this was extended to domestic policy under, for example, Johnson and Nixon.

In order to achieve marks in the higher levels, students need then also to examine the backlash against presidential power following Watergate and argue that presidents such as Ford and Carter appeared to be much weaker than their predecessors; some may use Ford's own reference to his 'imperilled' status and Congress's attempts to re-assert its checks and balances on presidential adventuring.

However, Level 3 and 4 responses will then go on to discuss the modern presidency and the strategies modern presidents use to get their policies and appointments through, especially given the increased regularity of divided government. A variety of references could be made to, for example, executive orders, executive agreements, executive privilege, signing statements and recess appointments, as ploys used to get around congressional or Senate intransigence. Presidents such as Reagan and George W Bush may be highlighted to indicate a partial restoration of presidential power. Although George H Bush and Clinton had some successes, they were sometimes frustrated, Clinton most noticeably in his disputes with Gingrich. A few exceptional responses may link his success in deficit reduction and New Federalism, for example, to the fact that these were policies also supported by the Republicans.

The best responses are likely to focus on George W Bush and Obama to address the reference to modern presidency and the best responses will conclude that the power of the presidents ebbs and flows due to many circumstances and a variety of variables. Here some may contrast presidential authority under George W Bush from 2002 to 2006 during years of united government to his lame duck status after the 2006 mid-term elections. Again, the best responses will evaluate Obama's successes and challenges within the context of divided government and may refer to Skinner's thesis on the partisan presidency as party balance in the House in particular or Congress in general has impacted on presidential achievements as do Supreme Court decisions. References may be made to Obama's use of executive orders on, for example, young illegal immigrants and gun control. Some responses will argue that restrictions like the War Powers Resolution are not used and are of dubious constitutionality while presidents rightly continue to claim executive privilege despite the *US v Nixon*.

AO3 marks on this question must be awarded to reflect the extent to which an answer is clearly expressed, is well structured, leads to a conclusion that is consistent with the preceding knowledge and analysis and uses relevant political vocabulary, including theories and concepts, as identified in the mark scheme.

Topic 4: The Judicial Branch of Government: The Supreme Court

- 0 7** Explain how US Supreme Court justices are appointed and why the process is considered significant.

[10 marks]

The most basic responses should explain that Supreme Court justices are nominated by the president and then confirmed by the Senate by a majority vote. Although most nominations are confirmed, there is the odd controversial rejection such as that of Bork in 1987.

Students should explain that the process is significant because vacancies are infrequent, appointments are for life ('during good Behavior') and the court has extensive powers of judicial review. Thus presidents use their powers of nomination to influence the court's philosophy and prolong their legacy after they have left office.

Level 3 and 4 responses may argue that the confirmation process has become increasingly politicised, particularly during periods of divided government and that the presidential choice of nominees may be tempered by such considerations. Examples may be given of nominees who withdrew such as Harriet Miers or who found the confirmation hearings (by the Senate Judiciary Committee) gruelling such as Clarence Thomas. The best responses are likely to point out that justices may not behave in line with presidential expectations as with Warren and Eisenhower and Burger and Nixon respectively.

- 0 8** 'The main role of the Supreme Court is to protect the rights and liberties of US citizens.' Discuss.

[30 marks]

The Supreme Court's extensive powers of judicial review enable it to declare acts of Congress and the action of either a federal or state official unconstitutional. For the proponents of limited government, the Supreme Court thus protects the citizen from the state.

The Bill of Rights contains the essential rights that US citizens enjoy. Later amendments extend these rights further. Amendment 14 is itself crucial as it nationalised the Bill of Rights to apply to state law.

Students will be able to cite a number of landmark rulings which show how the Supreme Court has upheld these rights. The following are indicative examples (others could be used) and here it can be argued that the Supreme Court is effective in protecting these rights. The freedom of expression as outlined in the First Amendment was protected by the Supreme Court in 1989 in the *Texas vs Johnson* case on flag desecration while *Engel vs Vitale* is clear on the issue of prayer in public schools. Again recent controversial rulings on the Second Amendment support the right of the individual to bear arms. Although students do not need to explore every amendment, students may refer to rulings upholding the rights of the criminally accused and/or the use of Amendment 9 in legalising abortion in *Roe vs Wade* and same-sex activity in *Lawrence vs Texas*.

In order to achieve high marks, students should explain how the interpretation of rights is very dependent on the Court's prevailing judicial philosophy as restrained or active, strict or loose in its constructionism. The decision of the Court in the *Bush vs Gore* case in

2000 outraged many citizens because they believed that the Court had effectively denied the rights of Americans to a fair election result because of a narrow interpretation of whether a re-count of votes in Florida should be allowed to proceed.

In contrast, some may argue that the Court has used its power as a check on presidential power such as with executive privilege and Nixon and striking down the Line Item Veto Act in 1998 against Clinton. Yet some rulings have appeared to erode rights as in *Gonzales vs. Raich* while as an appellate court, it can show restraint by refusing to hear cases such as the Schiavo 'right to die' case.

Students may refer to instances where the Court did and does not afford protection from the Jim Crow laws to the treatment of Japanese Americans in the Second World War and the ongoing controversy over prisoners in Guantanamo Bay. Here some students may refer to the controversial 2013 ruling in *Shelby County vs. Holder* that the preclearance formula of the 1965 Voting Act was unconstitutional under the 10th Amendment. Some may also refer to the ongoing debate about the court's rulings on the 'elastic clause' versus Amendment 10 and states' rights.

The best responses may discuss the current pro-corporation decisions of the Roberts Court in campaign funding as in *Citizens United vs. F.E.C.* or the right of firms in *Burwell vs. Hobby Lobby Stores* to refuse to allow employees access to contraception because of the owners' religious beliefs under 'free exercise'. This may be contrasted with rulings against consumer rights as in *AT&T Mobility vs. Concepcion*.

Yet some may argue that the Court cannot contradict the Constitution and its amendments, no matter how perverse they may be such as the 18th Amendment on prohibition. The best responses may argue that the Court's rulings on topics like abortion and gay rights may well reflect the inertia of elected politicians to tackle such wedge issues. Some may rightly point out that even when the Court upholds rights it cannot enforce them as with *Brown* and so some rulings like *Engel* are sometimes ignored.

AO3 marks on this question must be awarded to reflect the extent to which an answer is clearly expressed, is well-structured, leads to a conclusion that is consistent with the preceding knowledge and analysis and uses relevant political vocabulary, including theories and concepts, as identified in the mark scheme.