

JOHN T. ROURKE



YOU DECIDE!

Current Debates in American Politics

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You Decide! Current Debates in American Government by John T. Rourke

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PREFACE

To the Students

This book is founded on two firm convictions. The first is that each of you who read this book is profoundly affected by politics, probably in more ways than you know. The second “truth” is that it is important that everyone be attentive to and active in politics.

POLITICS AFFECTS YOU

The outcome of many of the 18 debates in this printed volume and the 6 supplemental debates on the Web will impact your life directly. If you play college sports, for example, the controversy over Title IX in **Debate 13** helps determine what teams and athletic scholarship support are available at your school. Similarly, the issue of affirmative action in **Debate 17** may influence your admission to graduate school, if that is the course you take. More generally, **Debate 15** over whether there should be a balanced budget amendment to the U.S. Constitution will play a role in what taxes you pay and what services you receive from the government. Such an amendment might, for example, reduce the availability of Pell Grants and other financial support for college students. It is also college-age students who are most likely to be sent to and to die in wars. There has not been a military draft since the Vietnam War era, and U.S. casualties have been relatively light in wars since then. But in that war, 61% of the more than the 58,000 Americans killed were between the ages of 17 and 21. There are some critics who argue that the Bush Doctrine, featured in **Debate 18**, could lead to more wars that would put American young adults in peril. On a related topic, **Debate 12** addresses who gets to decide if Americans will be sent to war. Under current political and constitutional realities, the answer is, “usually the president.” Are you comfortable with that, personally or as a citizen in a democracy? **Debate 22** also address presidential powers, and would enhance them if the suggestion of one advocate that the president be giving a line-time veto were to be adopted.

PAY ATTENTION TO THE POLICY PROCESS

Process may seem less interesting than policy to many people, but you do not have to study politics very long to learn that *who* decides something very often determines *what* the policy will be. Process does not always determine which policy is adopted, but plays a large role. Therefore, there are a number of debates in this volume whose outcome does not directly affect a specific policy, but which could have a profound impact on the policy process. For example **Debate 2** on Federalism may seem abstract, but one of the cases on which the debate turns involved the failed attempt of a Virginia woman to use U.S. civil rights law to sue an individual whom she alleged had raped her while she was a student at a public university in Virginia. The Supreme Court rejected her attempt on the grounds that the federal law on which the suit rested violated the division of power between the Washington, D.C. and the state governments in the federal system. **Debate 20** also addresses federalism, and one advocate proposes to strengthen the states by allowing the Constitution to be amended without the involvement of Congress.

Policy is also a reflection, in part, of who serves, and Debates 10, 11, and 21 all focus on that issue. If the Electoral College had been earlier abolished, which is the topic of **Debate 10**, then Al Gore, not George Bush, would have won the presidency in 2000.

Both advocates in **Debate 11** argue that they want to give you more choice as to who will represent you in Congress but they disagree about how. One advocate says the way to do it is to limit the term of federal legislators so that there will be regular turnover. The other advocate replies that doing so will limit your ability to be represented for many terms by an effective legislator whom you support. **Debate 21** takes up changing to a proportional representation system of elections. If adopted that would loosen, if not break the seeming strangle-hold that the Republicans and Democrats have on who gets elected. Indeed, such a change might make **Debate 9** on whether the Democrats or Republicans are likely to be the dominant party in the foreseeable future a moot point.

YOU CAN AND SHOULD AFFECT POLITICS

The second thing that this volume preaches is that you can and should take part in politics. One prerequisite for good participation is good information. Much of that comes through the new media, and, focusing on the Iraq War in 2003, **Debate 7** asks whether the coverage of the war was innovative journalism or voyeuristic reality TV.

Armed with knowledge, you should strive to become involved in the policy process. Anti-terrorist legislation is the subject of **Debate 4**, and many critics think that the freedoms of Americans are threatened by the Patriot Act enacted soon after the 9/11 terror attacks and by Patriot Act II, which the Bush administration has proposed. Others reply that such fears are overblown and that the minor restrictions on civil liberties in the bills help keep Americans safer from terrorism. Whatever your view, your liberties and life are involved, and you can become active in defeating or promoting the necessary renewal of Patriot Act I and the enactment of Patriot Act II.

Other debates may influence your ability to be active. Some people criticize those Americans who feel a strong tie to the land of their heritage and who favor U.S. policies that favor that land. Whether doing so is misplaced allegiance or an all-American tradition is taken up in **Debate 8** on ethnic lobbying. Another line of criticism is leveled at those who dissent from announced policy, especially during time of foreign policy crisis. The advocates in **Debate 6** differ on whether such dissent is un-American or patriotic.

Debate 23 about campaign finance reform also addresses participation. Those who argue that there should be strict limits on how much people and organizations can give to political candidates claim that the impact of money on politics makes a mockery of the idea that all citizens should have an equal say. Opponents rejoin that the proposed restrictions violate their freedom of speech. This issue is followed by a discussion in **Debate 24** about who can participate in perhaps the ultimate way: seeking the country's highest office, the presidency. Arnold Schwarzenegger may have been able to get elected as governor of California in October 2003, but as a foreign-born citizen he is constitutionally barred from becoming president. Should that barrier be eliminated? Perhaps more than any other issue, **Debate 19** relates to the idea that would most radically change participation in this country. That is instituting direct democracy by allowing the people as a whole to make law directly through processes called initiatives and referendums.

THERE ARE OFTEN MORE THAN TWO SIDES TO A QUESTION

Often public policy questions are put in terms of "pro and con," "favor or oppose," or some other such stark choice. This approach is sometimes called a Manichean approach, a reference to Manicheanism, a religion founded by the Persian prophet Mani (c. 216—

276). It taught “dualism,” the idea the universe is divided into opposite, struggling, and equally powerful realities, light (good) and darkness (evil).

The view here is that many policy issues are more a matter of degree, and the opinion of people is better represented as a place along a range of possibilities rather than an up or down Manichean choice. Numerous debates herein are like that. For example, surveys of the American people about abortion, the subject of **Debate 3**, find that only a small minority of people is staunchly pro-choice or pro-life. The majority have a nuanced view that, on the one hand, supports women being able to terminate their pregnancies but that, on the other hand, reflects reservations based on timing and circumstances. Opinion is also something like that about the death penalty, the focus of **Debate 16**. A large majority of Americans favor it, but surveys also show that people are troubled by a range of possible injustices such as the relationship of wealth to the ability to mount a top notch defense, the ability to execute people for crimes committed while a juvenile, and claims of racial injustice.

MANY ISSUES HAVE MULTIPLE ASPECTS

Often political issues are sort of like matryoshkas, the Russian nested dolls in which a doll comes apart revealing a smaller doll inside, inside in which there is another doll, and so on. **Debate 1** is about “the right to bear arms.” At its most specific, the issue is whether individuals have such a right. But deciding that involves the larger question of how to decide what those who wrote the Second Amendment meant. That matter, in turn, takes us to an even larger debate about whether we should follow the literal intent of those who wrote constitutional language, most of which is more than two centuries old, or apply the language of the Constitution within the context of the 21st century. In much the same way, **Debate 14**, on qualifications for the bench, has some specific and historical aspects, such what the phrase “advice and consent” of the Senate means. There are also matters of narrow constitutional controversy over whether the Senate parliamentary tactic called a filibuster is permissible as a way for a minority of senators to block the judicial nominees of the president. These smaller, albeit important, matters fall within the larger question of ideology and partisan politics in the selection and confirmation or rejection of judges by the Senate.

The discussion in **Debate 5** over whether English should be made the national language is also multifaceted. The language issue is just part of a larger question about what being an American means. The idea of the “melting pot” is not attractive to everyone because, to them, melting into the culture means giving up their own and adopting the largely European-based culture that has so far defined Americans.

SOME CONCLUDING THOUGHTS

The points with which we began are important enough to reiterate. Whether you care about politics or not, it affects you every day in many ways. As the legendary heavyweight boxer Joe Louis put it after knocking out Billy Conn, a more agile but less powerful opponent, in their 1941 championship fight, “You can run, but you can’t hide.”

Simply paying attention is a good start, but taking action is even better. Everyone should be politically active, at least to the level of voting. Doing so is in your self-interest because decisions made by the federal, state, and local governments in the U.S. political system provide each of us with both tangible benefits (such as roads and schools) and in-

tangible benefits (such as civil liberties and security). Also, for good or ill, the government takes things away from each of us (such as taxes) and restricts our actions (such as speed limits). It is also the case in politics that, as the old saying goes, squeaky wheels get the grease. Those who participate actively are more likely to be influential. Those who do not, and young adults are by far the age group least likely to even vote, are cosigned to grumbling impotently on the sideline.

As an absolute last thought (really!), let me encourage you to contact me with questions or comments. My e-mail address is john.rourke@uconn.edu. Compliments are always great, but if you disagree with anything I have written or my choice of topics or have a suggestion for the next edition, let me know. Thanks!

To the Faculty

Having plied the podium, so to speak, for three decades, I have some well-formed ideas of what a good reader should do. It is from that perspective that I have organized this reader to work for the students who read it and the faculty members who adopt it for use in their classes. Below are what I look for in a reader and how I have constructed this one to meet those standards.

PROVOKE CLASS DISCUSSION

The classes I have enjoyed the most over the years have been the ones that have been the liveliest, with students participating enthusiastically in a give and take among themselves and with me. Many of the debates herein have been selected to engender such participation in your classes by focusing on hot-button topics that provoke heated debate even among those who are not heavily involved in politics and who do not have a lot of background on the topic. The very first topic, gun laws, in Debate 1, is just such a subject. More than once I have had students get into spirited exchanges over the “right to bear arms,” so I thought it would be a great debate to open the volume. Just a few of the other hot-button topics are abortion (Debate 3), English as the official language (Debate 5), the impact of Title IX on college athletics (Debate 13), and the death penalty (Debate 16). I hope they rev up your classes as much as they have energized mine.

Another point about class discussion as I point out in the Preface section “To the Students,” is that while the debate titles imply two sides, many policy topics are not a Manichean choice between yes and no. Instead, I have tried to include many issues on which opinion ranges along a scale. From that perspective, I often urge students to try to formulate a policy that can gain majority support if not a consensus. You will also find that many of the issues herein are multifaceted, and I try to point that out to the students. For instance, the debate about gun control is more than about weapons, it is also about how we interpret and apply the Constitution.

PROVIDE A GOOD RANGE OF TOPICS

I always look for a reader that “covers the waterfront,” and have tried to put together this reader to do that. There are numerous debates on specific policy issues and others on process. All the major institutions are covered in one or more debates, and there are also debates touching on such “input” elements as parties, campaigns, interest groups, and the media. The primary focus of the reader is on the national government, but federalism also receives

attention in Debates 2 and 20. I have also included several debates that are at the intersection of domestic and foreign affairs, including Debate 4 (anti-terrorist legislation), Debate 6 (the acceptability of dissent during foreign crises), Debate 7 (media coverage of the war with Iraq), Debate 12 (presidential war powers), and Debate 18 (the Bush Doctrine).

My sense of a good range of topics also means balancing hot-button topics with others that, while they will draw less of an emotional response, are important to debate because they give insight about how the system works and might work differently. Debate 2 on federalism is an example, and hopefully it will get students to think about the federal system, which my experience tells me they mostly take as an unchanging given. Another example is the idea presented in Debate 21 of going from a single-member district, plurality electoral system to a proportional representation system.

GIVE THE STUDENTS SOME BACKGROUND FOR THE READING

Readers that work well provide the students with some background material that is located just before the reading. This debate volume follows that scheme. There is a two-page introduction to each debate that establishes its context. As part of this set up, each introduction provides the students with several “points to ponder” as they read the debates.

Moreover, the introductions do more than just address the topic per se. Instead they try to connect it to the chapter of the text for which it is designed. For example, the introduction to Debate 14 on the tensions between President Bush and the Senate Democrats over judicial nominations begins with the power of the judiciary in the U.S. political system and how that makes judicial appointments such a high-stakes issue.

PROVIDE FOLLOW-UP POSSIBILITIES

One of the rewards of our profession is seeing students get excited about a field that intrigues us, and the reader provides a “continuing debate” section after each of the reading pairs. This section has three parts. “What Is New” provides an update of what has occurred since the date(s) of the two articles. “Where to Find More” points students to places to explore the topic further. I have particularly emphasized resources that can be accessed on the Internet on the theory that students are more likely to pursue a topic if they can do so via computer than by walking to the library. Needless to say, I think libraries are great and students should have to use them, so there are also numerous references to books and academic journals. Finally, the continuing debate section has a “What More to Do” part. This segment presents topics for discussion, suggests projects (like finding out how well your school is doing by Title IX standards), and advises how to get active on a topic.

FIT WITH THE COURSE

I favor readers that fit the course I am teaching. I prefer a book with readings that supplement all or most of the major topics on the syllabus and that also allows me to spread the reading out so that it is evenly distributed throughout the semester. To that end, this book is organized to parallel the outline of the major introduction to American politics texts in use today. For those who favor the foundations-politics-institutions-policy approach, the table of contents of this volume should match almost exactly with their text and syllabus. For those who use a foundations-institutions-politics-policy scheme, a little, but not much, adjustment will synchronize the debates herein with their plans. Moreover to help

with that, I have labeled each debate in the Table of Contents with the syllabus topic that fits with the debate. Additionally, for the 18 debates in the printed edition, I have indicated alternative syllabus topic for each. I have also made suggestions about how each of the six debates on the Web might fit with various text chapters and syllabus topics.

FLEXIBILITY

While there is a fair amount of similarity in the organization of the major introduction to American politics texts, I suspect that the syllabi of faculty members are a good deal more individualistic. With that in mind, I have provided flexibility in the reader. First, there are 18 debates in the printed edition, each which is related to a topic, but each of which has suggestions in the table of contents for alternative assignment. Then there are 6 additional readings on the Longman Web site associated with *You Decide!* Each of these also has multiple uses and my suggestions about how to work them into your syllabus. Thus, you can use all 24 debates or many fewer, you can substitute some on the Web for some in the printed edition, you can follow the order in the book fairly closely with most texts or you can rearrange the order at will. As the Burger King slogan goes, "Have it Your Way!"

As a final note, let me solicit your feedback. The first edition of any text or reader is always a bit of a prototype, and I consider *You Decide!* to be a work in progress. My e-mail address is john.rourke@uconn.edu. Of course I will be pleased to hear about the things you like, but I and the next edition of the reader will surely benefit more from hearing how I could have done better and what topics (and/or readings) would be good in the next edition. Thanks!

TABLE OF CONTENTS

Preface xiv

1. CONSTITUTION 2

GUNS, SAFETY, AND THE CONSTITUTION: INDIVIDUAL RIGHT OR SUBJECT TO REGULATION?

Guns, Safety, and the Constitution: Individual Right

ADVOCATE: Joyce Malcolm, Professor, Department of History, Bentley College and Senior Fellow, MIT Security Studies Program

SOURCE: "Infringement," *Common Place*, July 2002

Guns, Safety, and the Constitution: Subject to Regulation

ADVOCATE: Daniel A. Farber, Henry J. Fletcher Professor of Law and Associate Dean of Faculty and Research, University of Minnesota

SOURCE: "Disarmed by Time: The Second Amendment and the Failure of Originalism," *Chicago-Kent Law Review*, 2000

Also suitable for chapters on Courts, Civil Liberties, Criminal Justice Policy

2. FEDERALISM 16

THE REHNQUIST COURT AND FEDERALISM: HOBBLING CONGRESS OR DEFENDING THE STATES?

The Rehnquist Court and Federalism: Hobbling Congress

ADVOCATE: Leon Friedman, Professor, Hofstra University School of Law

SOURCE: "Overruling the Court," *American Prospect*, August 27, 2001

The Rehnquist Court and Federalism: Defending the States

ADVOCATE: Marci A. Hamilton, Paul R. Verkuil Chair in Public Law, Benjamin N. Cardozo School of Law, Yeshiva University

SOURCE: Testimony during hearings on "Narrowing the Nation's Power: The Supreme Court Sides with the States," before the U.S. Senate Committee on the Judiciary, October 1, 2002

Also suitable for chapters on Courts

3. CIVIL RIGHTS 26

BANNING D & X (PARTIAL-BIRTH) ABORTIONS: VIOLATING WOMEN'S RIGHTS OR PROTECTING FETAL RIGHTS?

Banning D&X (Partial-Birth) Abortions: Violating Women's Rights

ADVOCATE: Center for Reproductive Rights

SOURCE: Position paper, "Unconstitutional Assault on the Right to Choose: 'Partial-Birth Abortion' Ban Is an Affront to Women and to the U.S. Supreme Court," February 2003

Banning D&X (Partial-Birth) Abortions: Protecting Fetal Rights

ADVOCATE: Kathi A. Aultman, MD, board certified obstetrician gynecologist, and Fellow, American College of Obstetricians and Gynecologists

SOURCE: Testimony during hearings the "Partial-Birth Abortion Ban Act of 2002" before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, July 9, 2002

Also suitable for chapters on Courts, American Political Culture/Ideology, Interest Groups

4. CIVIL LIBERTIES 48

**ANTI-TERRORIST LEGISLATION:
THREAT TO CIVIL LIBERTIES OR CONSTITUTIONAL SHIELD?**

Anti-Terrorist Legislation: Threat to Civil Liberties

ADVOCATE: Timothy Lynch, Director, Project on Criminal Justice, Cato Institute

SOURCE: "Breaking the Vicious Cycle: Preserving Our Liberties While Fighting Terrorism," Cato Policy Analysis No. 443, June 26, 2002

Anti-Terrorist Legislation: Constitutional Shield

ADVOCATE: Ramesh Ponnuru, Senior Editor, *National Review*

SOURCE: "1984 in 2003? Fears about the Patriot Act Are Misguided," *National Review*, June 2, 2003

Also suitable for chapters on Courts, Political Culture (freedom v. safety), Criminal Justice, National Security

5. AMERICAN PEOPLE/POLITICAL CULTURE 60

**ENGLISH AS THE NATIONAL LANGUAGE:
MAKE IT OFFICIAL OR ACCEPT LINGUISTIC DIVERSITY?**

English as the National Language: Make It Official

ADVOCATE: Mauro E. Mujica, Chairman of the Board and CEO of U.S. ENGLISH

SOURCE: "Statement from the Chairman," Website of U.S. ENGLISH

English as the National Language: Accept Linguistic Diversity

ADVOCATE: Edward M. Chen, Staff Counsel, American Civil Liberties Union of Northern California

SOURCE: Testimony during hearings on "Implications of 'Official English' Legislation," before the U.S. House of Representatives Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, November 1, 1995

Also suitable for chapters on Civil Rights, Education Policy (bilingual education)

6. PUBLIC OPINION/PARTICIPATION 78

POST-9/11 CRITICISM OF U.S. FOREIGN POLICY: UN-AMERICAN OR PATRIOTIC

Post-9/11 Criticism of U.S. Foreign Policy: Un-American

ADVOCATE: Victor Davis Hanson, Shifrin Visiting Professor of Military History, U.S. Naval Academy, Annapolis

SOURCE: "I Love Iraq, Bomb Texas," *Commentary*, December 2002

Post-9/11 Criticism of U.S. Foreign Policy: Patriotic

ADVOCATE: Gore Vidal, novelist, playwright, and essayist

SOURCE: "We Are the Patriots," *The Nation*, June 2003

Also suitable for chapters on Civil Liberties, Foreign Policy

7. MEDIA 94

"EMBEDDED" REPORTERS DURING THE WAR WITH IRAQ: INNOVATIVE COVERAGE OR VOYEURISTIC REALITY TV?

"Embedded" Reporters During the War with Iraq: Innovative Coverage

ADVOCATE: Sherry Ricchiardi, Senior Writer, *American Journalism Review*

SOURCE: "Close to the Action," *American Journalism Review*, May/June 2003

"Embedded" Reporters During the War with Iraq: Voyeuristic Reality TV

ADVOCATE: Paul Friedman, former Executive Vice-President, ABC News

SOURCE: "TV: A Missed Opportunity," *Columbia Journalism Review*, May/June 2003

Also suitable for chapters on National Security Policy

8. INTEREST GROUPS 106

ETHNIC FOREIGN POLICY LOBBYING: MISPLACED ALLEGIANCE OR ALL-AMERICAN TRADITION?

Ethnic Foreign Policy Lobbying: Misplaced Allegiance

ADVOCATE: Geoffrey Wheatcroft, a British journalist

SOURCE: "Hyphenated Americans," *Guardian Unlimited* online, April 25, 2000

Ethnic Foreign Policy Lobbying: All-American Tradition

ADVOCATE: Yossi Shain, Aaron and Cecile Goldman Visiting Professor, Georgetown University; Professor of Political Science, Tel Aviv University

SOURCE: "For Ethnic Americans, The Old Country Calls," *Foreign Service Journal*, October 2000

Also suitable for chapters on Political Culture and Foreign Policy

9. POLITICAL PARTIES 118

THE ODDS-ON FAVORITE IN THE FUTURE:
DEMOCRATS OR REPUBLICANS?

The Odds-On Favorite in the Future: Democrats

ADVOCATE: John B. Judis, Senior Editor, *The New Republic*, and Ruy Teixeira, Senior Fellow, the Century Foundation

SOURCE: "America's Changing Political Geography: Where Democrats Can Build a Majority," *Blueprint: Ideas for a New Century*, September/October 2002

The Odds-On Favorite in the Future: Republicans

ADVOCATE: Daniel Casse

SOURCE: "An Emerging Republican Majority?" *Commentary*, January 2003

Also suitable for chapters on Elections

10. VOTING/CAMPAIGNS/ELECTIONS 136

THE ELECTORAL COLLEGE: ABOLISH OR PRESERVE?

The Electoral College: Abolish

ADVOCATE: Becky Cain, President, League of Women Voters

SOURCE: Testimony during hearings on "Proposals for Electoral College Reform: H.J. Res. 28 and H.J. Res. 43" before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, September 4, 1997

The Electoral College: Preserve

ADVOCATE: Judith A. Best, Professor of Political Science, State University of New York at Cortland

SOURCE: Testimony during hearings on "Proposals for Electoral College Reform: H.J. Res. 28 and H.J. Res. 43" before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, September 4, 1997

Also suitable for chapters on Presidency, Federalism

11. CONGRESS 148

CONGRESSIONAL TERM LIMITS:
PROMOTING CHOICE OR RESTRICTING CHOICE?

Congressional Term Limits: Promoting Choice

ADVOCATE: Paul Jacob, Executive Director, U.S. Term Limits

SOURCE: Testimony during hearings on "Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives," before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, January 22, 1997

Congressional Term Limits: Restricting Choice

- ADVOCATE:** John R. Hibbing, Professor of Political Science, University of Nebraska
- SOURCE:** Testimony during hearings on “Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives,” before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, January 22, 1997

Also suitable for chapters on Elections

12. PRESIDENCY 160

PRESIDENTIAL WAR POWERS AND TERRORISM: UNILATERAL AUTHORITY OR CONSTITUTIONAL CONSTRAINTS

Presidential War Power and Terrorism: Unilateral Authority

- ADVOCATE:** Douglas Kmiec, Dean of the Columbus School of Law, The Catholic University of America
- SOURCE:** Testimony during hearings on “Applying the War Powers Resolution to the War on Terrorism,” before the U.S. Senate Committee on the Judiciary, April 17, 2002

Presidential War Power and Terrorism: Constitutional Constraints

- ADVOCATE:** Jane Stromseth, Professor of Law, Georgetown University Law Center
- SOURCE:** Testimony during hearings on “Applying the War Powers Resolution to the War on Terrorism,” before the U.S. Senate Committee on the Judiciary, April 17, 2002

Also suitable for chapters on Constitution, Foreign Policy, National Security Policy

13. BUREAUCRACY 176

THE DEPARTMENT OF EDUCATION AND TITLE IX: CHAMPION OF EQUALITY OR OVERZEALOUS CRUSADER?

The Department of Education and Title IX: Champion of Equality

- ADVOCATE:** Judith Sweet, Vice-President for Championships and Senior Women Administrator, National Collegiate Athletic Association
- SOURCE:** U.S. Department of Education, Secretary’s Commission on Opportunity in Athletics, Hearings, August 27, 2002

The Department of Education and Title IX: Overzealous Crusader

- ADVOCATE:** Amanda Ross-Edwards, Visiting Professor of Political Science, Fairfield University
- SOURCE:** “The Department of Education and Title IX: Flawed Interpretation and Implementation,” an essay written for this volume, October 2003

Also suitable for chapters on Civil Rights, Education Policy

14. JUDICIARY 188

LEGAL PHILOSOPHY AS A QUALIFICATION FOR THE BENCH:
JUDICIOUS STANDARD OR OBSTRUCTIONIST BARRIER?

Legal Philosophy as a Qualification for the Bench: Judicial Standard

ADVOCATE: Laurence H. Tribe, Professor, Harvard Law School

SOURCE: Testimony during hearings on "Judicial Nominations, Filibusters, and the Constitution: When a Majority Is Denied Its Right to Consent," before U.S. Senate Committee on the Judiciary, May 6, 2002

Legal Philosophy as a Qualification for the Bench: Obstructionist Barrier

ADVOCATE: Todd F. Gaziano, Senior Fellow in Legal Studies and Director, Center for Legal and Judicial Studies, The Heritage Foundation

SOURCE: Testimony during hearings on "A Judiciary Diminished Is Justice Denied: The Constitution, the Senate, and the Vacancy Crisis in the Federal Judiciary" before U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, October 10, 2002

Also suitable for chapters on Constitution, Congress

15. ECONOMIC POLICY 216

CONSTITUTIONALLY REQUIRE A BALANCED BUDGET:
FISCAL SANITY OR FISCAL IRRESPONSIBILITY?

Constitutionally Require a Balanced Budget: Fiscal Sanity

ADVOCATE: William Beach, Director, Center for Data Analysis, Heritage Foundation

SOURCE: Testimony during hearings on the "Balanced Budget Amendment" before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, March 6, 2003

Constitutionally Require a Balanced Budget: Fiscal Irresponsibility

ADVOCATE: Richard Kogan, Senior Fellow, Center on Budget and Policy Priorities

SOURCE: Testimony during hearings on the "Balanced Budget Amendment" before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, March 6, 2003

Also suitable for chapters on Constitution, Policy

16. CRIMINAL JUSTICE POLICY 228

THE DEATH PENALTY: RACIALLY BIASED OR JUSTICE SERVED?

The Death Penalty: Racially Biased

ADVOCATE: Julian Bond, Professor of History, University of Virginia and Distinguished Professor-in-Residence, American University

SOURCE: Testimony during hearings on “Race and the Federal Death Penalty,” before the U.S. Senate Committee on the Judiciary, Subcommittee on Constitution, Federalism, and Property Rights, June 13, 2001

The Death Penalty: Justice Served

ADVOCATE: Andrew G. McBride, former U.S. Associate Deputy Attorney General

SOURCE: Testimony during hearings on “Race and the Federal Death Penalty,” before the U.S. Senate Committee on the Judiciary, Subcommittee on Constitution, Federalism, and Property Rights, June 13, 2001

17. EDUCATION POLICY 240

AFFIRMATIVE ACTION ADMISSIONS: PROMOTING EQUALITY OR UNFAIR ADVANTAGE?

Affirmative Action Admissions: Promoting Equality

ADVOCATE: 41 College Students and 3 Student Coalitions

SOURCE: Amicus Curiae brief to the U.S. Supreme Court in *Grutter v. Bollinger* (2003)

Affirmative Action Admissions: Unfair Advantage

ADVOCATE: 21 Law Professors

SOURCE: Amicus Curiae brief to the U.S. Supreme Court in *Grutter v. Bollinger* (2003)

Also suitable for chapters on Constitution, Civil Rights

18. FOREIGN POLICY 254

THE BUSH DOCTRINE: WISDOM OR FOLLY?

The Bush Doctrine: Wisdom

ADVOCATE: Thomas Donnelly, Resident Fellow, American Enterprise Institute

SOURCE: “The Underpinnings of the Bush Doctrine,” *National Security Outlook*, AEI Online, February 1, 2003

The Bush Doctrine: Folly

ADVOCATE: Todd Gitlin, Professor of Journalism and Sociology, Columbia University

SOURCE: “America’s Age of Empire,” *Mother Jones*, January/February 2003

Also suitable for chapters on Presidency, National Security Policy

CREDITS 267

EXTENDED TABLE OF CONTENTS

WEB ISSUES

The following topics are available on the Web at:
<http://www.ablongman.com/YouDecide/>

19. DECIDING POLICY

ADOPT DIRECT DEMOCRACY *OR* REMAIN A REPUBLIC?

Deciding Policy: Adopt Direct Democracy

ADVOCATE: Harlan Hahn, Professor of Political Science, University of Southern California

SOURCE: Testimony during hearings, "Voter Initiative Constitutional Amendment," before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, December 13, 1977

Deciding Policy: Remain a Republic

ADVOCATE: Peter G. Fish, Professor of Political Science, Duke University

SOURCE: Testimony during hearings, "Voter Initiative Constitutional Amendment," before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, December 13, 1977

Suitable for chapters on Introduction, Constitution, Political Participation, Policymaking

20. CONSTITUTIONAL AMENDMENTS

LET STATES INITIATE *OR* KEEP CURRENT PROCESS?

Constitutional Amendments: Let States Initiate

ADVOCATE: Nelson Lund, Professor, George Mason University School of Law

SOURCE: Testimony during hearings, "Procedures for State Initiation of Constitutional Amendments," before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, March 28, 1988

Constitutional Amendments: Keep Current Process

ADVOCATE: Representative Mickey Edwards (R-MA) and Louis Michael Seidman, Professor, Georgetown University Law Center, on behalf of Citizens for the Constitution, nonpartisan organization devoted to fostering public discussion concerning amendments to the Constitution

SOURCE: Testimony during hearings, "Procedures for State Initiation of Constitutional Amendments," before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, March 28, 1988

Suitable for chapters on Constitution, Federalism