

# Respect

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## Drawing Lines Around Voting by Phyllis Raybin Emert

Every 10 years, after the U.S. census figures are released, congressional voting districts in 43 states are required by law to be redrawn to account for population shifts. Congressional districts are the 435 areas across the country from which members are elected to the U.S. House of Representatives. There are seven states—Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming—that only have one representative in the House, so no redistricting is necessary.

In June 2023, the U.S. Supreme Court issued a decision in *Allen v. Milligan*. The Court was asked to determine whether Alabama's redrawn congressional redistricting plan violated Section 2 of the Voting Rights Act. The Voting Rights Act (VRA) was signed into law in August 1965 by then President Lyndon B. Johnson. Section 2 of the VRA "prohibits voting practices or procedures that discriminate on the basis of race," which includes incidents of vote denial, as well as vote dilution. Vote denial is when a person is denied the

opportunity to cast a ballot. Vote dilution is when the strength of someone's vote is diminished using the practices of packing or cracking.

A violation of Section 2 occurs when members of a protected class, for example Black voters, "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." In other words, Section 2 protects against racial **gerrymandering**.



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## Unique Challenges and Protections When Adopting Native American Children by Daryl E. Lucas

In the U.S., adoptions are primarily governed by state law. The adoption of Native American or Alaska Native children, however, is different. Those adoptions are governed by the Indian Child Welfare Act (ICWA), a 1978 federal law that gives tribal governments exclusive **jurisdiction** over children who are members of one of the 574 federally recognized Native American tribes. ICWA has been challenged many times in the courts, most recently in *Brackeen v. Haaland*, which the U.S. Supreme Court decided in June 2023.

### The Court's decision

The **plaintiffs** in *Brackeen v. Haaland*—a birth mother, foster and adoptive parents, and the State of Texas—challenged ICWA on multiple constitutional grounds, including that the **statute** exceeds the **plenary power** of the federal government, violates the 10th Amendment by infringing on states' rights, and discriminates on the basis of race. In a 7-2 decision, the Court maintained ICWA's constitutionality.



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## Muslim Women Face Discrimination for Wearing Hijab *by Emily Pecot*

Few garments evoke as much controversy as the hijab. Translated from Arabic as partition, curtain, or barrier, sometimes hijab refers to the headscarf worn by Islamic women, and sometimes it refers to the broader concept of practicing modesty by both men and women, according to the Women's Islamic Initiative in Spirituality & Equality, a global organization dedicated to promoting women's rights. For this reason, it is often referred to as practicing hijab or wearing hijab.

Head coverings for Muslim women come in different forms. The hijab typically fits snugly from the forehead around the face and drapes down the neck. Nearly half a million Muslim women and girls regularly wear hijab, according to the Pew Research Center. Typically, young women start wearing hijab in public or around non-family males when puberty begins.

Given the visibility of wearing hijab, 69% of Muslim women have encountered harassment

and religious discrimination compared to 57% of Muslim men, according to the Drake Institute of Women's Policy, a national, nonpartisan organization that provides information to government entities in order to improve inclusion, justice, and security outcomes for women. In the United States, federal and state governments cannot prohibit women from wearing hijab, yet Muslim women continue to face restrictions in athletics, schools, and workplaces.

and cultural oppression, igniting conflict worldwide. The most recent controversy regarding a woman's choice to practice hijab has been sparked, in part, by protests in Iran, where women and girls over the age of nine have been required by law to wear hijab since 1981.

In September 2022, Mahsa Amini, a 22-year-old living in Iran's Kurdistan region, died while in the custody of the Iranian morality police. She was allegedly arrested for improperly wearing her headscarf. Amini's death, after three days in police custody, sparked protests in 80 Iranian cities after

reports that she had been mistreated by law enforcement. Thousands of Iranian women took to the streets, removing their headscarves in protest—some burning them.

A month after Amini's death, the Iranian Legal Medical Organization released a report saying her death was

caused by an underlying heart condition

and that she had a heart attack while in custody. Amini's family disputes that finding. According to Iran Human Rights (IHR), a Norway-based nonprofit that is focused on human rights in Iran, more than 154 people were killed during the protests and hundreds were arrested.

In an op-ed that was posted to the website for the Carnegie Endowment for International Peace, a non-partisan international think tank located in Washington, DC, Sara Bazoobandi, Ph.D, who is considered an expert in Arab and Islamic studies, wrote that all over the world women make the personal choice about wearing hijab.

"In Iran, however, it was transformed into

## Why choose a head covering?

Some Muslim women consider wearing hijab obligatory under modesty guidelines outlined in the Qu'ran, the central Islamic religious text. Nadia B. Ahmad, a professor at Barry University's Dwayne O. Andreas School of Law in Orlando, and Asifa Quraishi, a law professor at the University of Wisconsin-Madison, who both teach courses on Islamic law and constitutional law, say it's not that simple.

In an op-ed for *The Washington Post*, they wrote, “Whether a woman’s hair is covered is a bad barometer for how religious she is. Some women wear hijab but don’t pray regularly or fast during Ramadan. Many Muslim women do not cover their hair but regularly pray and fast.”

The professors also point out that wearing hijab is not a pillar of Islam, whose five core **tenets** are faith, prayer, charity, fasting and pilgrimage to Mecca, which is considered the holy land to Muslims.

## Oppression vs. personal choice

Some view wearing hijab as a form of religious



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Jodi L. Miller  
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a symbol of oppression and marginalization,” Dr. Bazoobandi wrote. “The current rejection of the hijab by Iranian protestors, therefore, does not necessarily equal a rejection of Islam, or Islamic values. Rather, it represents the anger and frustration of the people—namely women—who have been deprived of their basic freedom of choice for decades.”

In July 2023, the Iranian government announced stricter modesty laws for women. The Hijab and Chastity Bill would, among other things, impose a prison sentence of 5 to 10 years for improper hijab, according to a *Time* magazine article.

### Controversial bans

In contrast to what’s happening in Iran, Muslim women in France and India are protesting hijab bans. France has consistently implemented policies that promote “strict **secularism**”. While the country does not ban wearing hijab in public spaces, in June 2023, France’s highest court upheld a ban imposed by the French Football Federation (FFF) on wearing hijab during games. A group of Muslim female soccer players brought the suit against FFF.

The French court put out a statement saying, “The ban enacted by FFF is suitable and proportionate. Sports federations, in charge of proper functioning of the public service whose management is entrusted to them, may impose on their players an obligation of outfit neutrality during competitions.”

The International Federation of Association Football (FIFA), soccer’s world governing body, instituted a similar ban in 2007; however, it lifted

that ban in March 2014. The FFF ban does not affect FIFA’s policy.



In February 2022, Karnataka, a state in southwest India on the coast of the Arabian Sea, banned wearing headscarves or religious garb in public schools and colleges. Muslim women protested and a group of Muslim students challenged the ban in court.

India’s Constitution contains “the right freely to profess, practice and propagate religion.” However, in March 2022, the highest court in Karnataka upheld the ban, ruling that the headscarf is not an essential religious practice of Islam. In October 2022, a two-judge panel of the India Supreme Court issued a split verdict, with one judge upholding the ban and the other saying that wearing hijab was “ultimately a matter of choice—nothing more and nothing less.” The case is expected to go before a larger bench of the India Supreme Court to provide a definitive ruling.

### Protections in the U.S.

A 2021 study published in the *Journal of Ethnic & Cultural Diversity in Social Work* found Muslim women

who wear hijab are 40% less likely to be hired and remain employed than Muslim women who don’t wear hijab. Wearing hijab is protected in the United States by the U.S. Constitution’s First Amendment right to religious expression. In addition, according to the American Civil Liberties Union (ACLU), under Title VII of the 1964 Civil Rights Act employers are prohibited from denying reasonable accommodations to those practicing hijab.

Wearing hijab has been litigated in the courts in several cases. A 2015 U.S. Supreme Court case—*EEOC v. Abercrombie & Fitch Stores*—concerned the retailer’s “Look Policy,” which prohibited employees from wearing head apparel, including hijabs.

In 2008, Samantha Elauf, a 17-year-old Muslim teenager who practiced hijab applied for a job at an Abercrombie & Fitch store in Tulsa, OK, and was denied a position. Elauf sued Abercrombie for discrimination. In June 2015, the U.S. Supreme Court sided with Elauf in an 8-1 decision. The Court’s ruling holds that the company did not offer religious accommodations under Title VII and that Elauf did not have to explicitly request accommodation.

The Court’s **majority opinion**, written by the late Justice Antonin Scalia, stated that the law was designed to ensure that “an employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions.” Justice Scalia wrote, “Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather it gives them favored treatment, affirmatively obligating employers not to fail or refuse to hire or discharge any individual...because

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## Challenges CONTINUED FROM PAGE ONE

In the Court's **majority opinion**, Justice Amy Coney Barrett wrote, "The bottom line is that we reject all of the petitioners' challenges to the **statute**, some on the merits and others for lack of standing."

Lack of standing refers to who can claim harm from a particular law. A petitioner/plaintiff must prove that they were harmed by a law and that a ruling in the plaintiff's favor would fix that harm.

### About the case

*Brackeen v. Haaland* consolidated three custody cases, but the main case involved the Brackeen family of Fort Worth, TX. In 2016, Chad and Jennifer Brackeen started fostering a 10-month-old Native American child. The little boy, known in court documents as A.L.M. was born to a Navajo mother and a Cherokee father. He was taken away from his mother due to her issues with substance abuse.

The Brackeens wanted to adopt the little boy, but Navajo social workers had found a tribal couple, not related to A.L.M. in New Mexico that wanted to adopt him. The Brackeens sued and a Texas judge, following guidelines outlined in ICWA, ruled in favor of the tribe. The New Mexico adoption, however, fell through and the Brackeens were able to adopt A.L.M.

In June 2018, A.L.M.'s biological mother had another child, a little girl, known in court documents as Y.R.J. The Brackeens wanted to adopt this child as well; however, the tribe had found a great aunt living on the Navajo reservation in Arizona, who also wanted to raise the child. The Brackeens sued again. In October 2018, a federal judge for the Northern District of Texas struck down ICWA, ruling it unconstitutional because Congress exceeded its authority by ordering a state to apply federal law in a domestic case. In March 2019, a family court judge in Texas agreed that ICWA violated the state's constitution; however, he ordered the Brackeens and the tribe to share custody of Y.R.J. with primary custody going to the Brackeens. Neither the Brackeens nor the great aunt were satisfied with the ruling.

### More on ICWA

Justice Neil Gorsuch, who has been a longtime supporter of tribal rights, wrote a **concurring opinion** in the case where he outlined the history of ICWA.

"The Indian Child Welfare Act did not emerge from a vacuum. It came as a direct response to the mass removal of Indian children from their families during the 1950s, 1960s, and 1970s by state officials and private parties," Justice Gorsuch wrote. "That practice, in turn, was only the latest iteration of a much older policy of removing Indian children from their families—one initially spearheaded by

federal officials with the aid of their state counterparts nearly 150 years ago. In all its many forms, the dissolution of the Indian family has had devastating effects on children and parents alike. It has also presented an existential threat to the continued vitality of tribes..."

When introducing the legislation that would become ICWA, then Senator James Abourezk cited a 1976 study conducted by the Association on American Indian Affairs, which revealed that "a minimum of 25% of all Indian children are either in foster homes, adoptive homes, and/or boarding schools, against the best interest of families and Indian communities."

The report from the study described the processes involved in removing Indian children from their homes and the abuse that occurred. "In the initial determination of parental neglect, the conceptual basis for removing a child from the custody of his/her parents is widely discretionary and the evaluation process involves the imposition of cultural and familial values which are often opposed to values held by the Indian family," the report stated. "Second, assuming that there

is a real need to remove the child from its natural parents, children are all too frequently placed in non-Indian homes, thereby depriving the child of his or her tribal and cultural heritage."

According to the study, 85% of the Indian children removed from their tribal homes were adopted by non-Indian families, usually white Christians. ICWA established a set of procedures and guidelines that must be followed when a case involves American Indian or Alaska Native children. The law states that preferences for adoption placements of Native American children should be in this order: a member of the child's extended family; other members of the Indian child's tribe; a family from another tribe; and finally non-Indians.

Michael Sliger, a professor who teaches a course on federal Indian law at Cornell Law School, points out that ICWA was a means of protecting Indian children, by keeping them with friends or relatives. If there was a child custody case involving an Indian child, jurisdiction in that case falls to tribal governments and their agencies to determine the best custodian for the child.

"The law has a good track record," Professor Sliger says. "It has assisted in keeping children with their families and within their society. Alienation and removal from their culture often do more harm than good as we have seen with the boarding school policies that didn't officially end until the 1980s."

Indeed, over the years the law has been upheld as an example of adoption best practices. Adoption agencies and child welfare organizations consider ICWA's goal of reunification with a Native American child's tribe to be the gold standard and essential to the definition of "the best interests of the child." More than two



*The flag of the Navajo Nation*

## Challenges CONTINUED FROM PAGE FOUR

dozen child welfare organizations, as well as the American Bar Association and the American Civil Liberties Union, filed **amicus briefs** supporting ICWA. According to the National Indian Child Welfare Association, 10 states—California, Oregon, Washington, Iowa, Minnesota, Michigan, Nebraska, New Mexico, Wisconsin and Oklahoma—passed laws that codify the federal protections outlined under ICWA into state law.

### The stakes

There was more at stake in *Brackeen v. Haaland* than just the adoption of Native American children. The question of tribal **sovereignty** was also at stake. If the U.S. Supreme Court had ruled that Congress exceeded its authority in passing ICWA, or that the statute discriminated on the basis of race, then other laws such as ones protecting Native American land, water, and gambling, could have been in jeopardy.

“It would put at risk every treaty, every property and political right and every power that Indian nations possess today,” Robert Miller, a professor of federal Indian law at Arizona State University and a tribal court judge, told *The New York Times*. “All of a sudden, lands would be owned by ‘a race of Indian people,’ not a tribal government. Your borders, your police laws, everything on the reservation would be in question.”

Professor Sliger explains that in their petition to the Court, the Brackeens claimed that ICWA dictates a preference for American Indian and Alaska Native children to be placed with only their people, thus the law is racially discriminatory. This would be the case, Professor Sliger explains, if “Indian” were a racial category—an important distinction. It is well documented that “Indian” pertains to a political and legal identity, he says.

“It is a legal term not a racial category,” Professor Sliger says. “It has been a legal term for a very long time, since the founders recognized that Indians were numerous and separate sovereign peoples.”

In fact, Justice Gorsuch refers to this distinction as well, calling it a “bedrock principle” and invoking *Morton v. Mancari*, a 1974 case that ruled regulations benefiting tribes are not unconstitutionally race-based because Indian status is a “political rather than racial classification.”

On this part of the plaintiffs’ claims, the Court ruled they lacked standing because the claim of equal protection in this case was directed at federal officials.

Justice Barrett wrote, “Enjoining [charging] the federal parties would not remedy the alleged injury, because state courts apply the placement preferences, and state agencies carry out the court-ordered placements.”

As to exceeding its authority, Professor Sliger says that Congress’s powers are broad, especially with regard to Indian laws and matters related to Indian territories. Again, he says that is why it is important to remember that “Indian” and “Indian Country” are legal terms used by the authors of the U.S. Constitution to establish Indians as a political identity.

“The plenary power of Congress means it can make laws regulating anything within the scope of congressional power,” Professor Sliger says. “In this case, it has the right to make laws and regulate anything outlined by the Indian Commerce Clause.”

Professor Sliger notes that the Court did not rule on the plaintiffs’ claim that ICWA violated the equal protection clause of the U.S. Constitution because of a lack of standing, so basically a technicality. He points out that the two dissenting opinions of the Court—written by Justice Clarence Thomas and Justice Samuel Alito—noted this challenge could be brought at another time.

In the final paragraph of his concurring opinion, Justice Gorsuch explains why Native Americans are unique.

“Our Constitution reserves for the tribes a place—an enduring place—in the structure of American life. It promises them sovereignty for as long as they wish to keep it. And it secures that promise by divesting States of authority over Indian affairs and by giving the federal government certain

significant (but limited and enumerated) powers aimed at building a lasting peace,” Justice Neil Gorsuch wrote. “In adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution’s original design.” •

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1. What do you think of ICWA’s order of adoption placements? Should there be other criteria for determining placements? If so, what? Explain your answer.
2. The 1976 report mentioned in the article stated that the evaluation process for removal from a tribal home imposed “cultural and familial values which are often opposed to values held by the Indian family.” Do you think a child, if possible, should stay with a family from their culture? Explain your answer.



## Voting CONTINUED FROM PAGE ONE

### First some background

In the redistricting process—when the lines for voting districts are redrawn—gerrymandering often occurs. The term gerrymander dates back to 1812. The word was coined to mock Massachusetts Governor Elbridge Gerry's approval of a voting district map that was manipulated to favor his party. The shape for one district on the map looked like a salamander. Gerry + salamander = gerrymander. More than 200 years later, the term is still being used.

There are two types of gerrymandering—**partisan** and racial. Partisan gerrymandering is based on political party lines, where voters from one particular party are favored over another. The U.S. Supreme Court has ruled that it is not for federal courts to decide on issues of partisan gerrymandering, leaving it up to Congress to remedy the issue. Racial gerrymanders, however, where lines are drawn along racial or ethnic lines has been determined by the Court in prior decisions to be unconstitutional.

Eugene D. Mazo, a professor at Seton Hall University Law School and an expert on election law and the voting process, points out that historically both parties—Republican and Democrat—gerrymander using methods of “packing” and “cracking” to manipulate congressional lines on a map to create districts that favor certain groups.

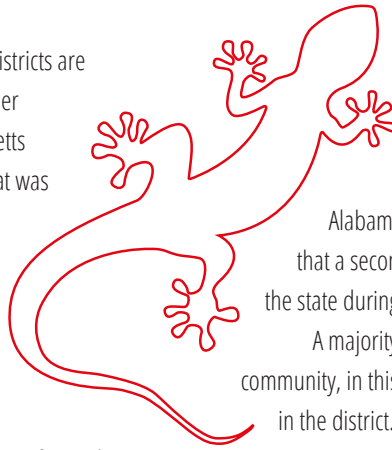
“Politicians can ‘pack’ like-minded voters into a single district, thus wasting the strength of their votes in other districts,” explains Professor Mazo. “‘Cracking’ works by dividing voters from a single district into two or more districts.” Cracking effectively dilutes the power of a certain group’s vote.

### Understanding *Milligan*

To understand the U.S. Supreme Court’s decision in *Allen v. Milligan*, Professor Mazo believes you need to first understand the Court’s 1986 decision in *Thornburg v. Gingles*, which also interpreted Section 2 of the Voting Rights Act, coming up with a three-prong test for vote dilution claims.

“In *Gingles*, the Supreme Court explained that when certain conditions were present in society, legislators had to draw electoral districts from which a minority population could elect a representative of its choice,” says Professor Mazo. “Specifically, this had to be done when (1) a minority group was sufficiently large [in number] and geographically compact [living closely together] that it could constitute a majority of its own in a single district; (2) this minority group was politically cohesive [a significant portion would support the same candidate]; and (3) the majority population [usually white] voted consistently as a bloc to defeat minority candidates.”

At the time Alabama lawmakers drew the voting map at issue in *Milligan*, African Americans made up 27% of the state’s population, yet of the seven congressional districts in the state, only one was a majority-Black district. The



**plaintiffs** in the case contended that Alabama’s voting map “packed” most of the state’s Black voters into the 7th congressional district and “cracked” the remaining Black voters into three other districts.

“The three *Gingles* conditions were present in Alabama,” Professor Mazo notes, “so the plaintiffs in *Milligan* argued that a second majority-minority congressional district had to be drawn in the state during the latest redistricting cycle.”

A majority-minority district simply means that members of a minority community, in this case African Americans, should be the majority of residents in the district. A three-judge panel of the U.S. Court of Appeals for the 11th Circuit agreed with the plaintiffs in *Milligan* and ordered Alabama to draw a second majority-minority Black district “in which Black voters either comprise a voting-age majority or something close to it.”

The state of Alabama objected to the lower court’s decision and **appealed** to the U.S. Supreme Court. Professor Mazo explains that Alabama argued a new map wasn’t necessary.

“To comply with the Voting Rights Act, Alabama argued it had to draw only race-neutral districts,” Professor Mazo says.

### The Court’s ruling

In a 5-4 decision, the U.S. Supreme Court **affirmed** the judgement of the three-judge panel, ruling that Alabama violated Section 2 of the VRA. The Court called Alabama’s argument in the case an “attempt to remake our Section 2 **jurisprudence** anew.” The ruling required Alabama to draw an additional majority-minority Black district and held that Section 2 of the VRA is constitutional.

“The Court’s opinion does not diminish or disregard the concern that Section 2 may impermissibly elevate race in the allocation of political power within the states,” Chief Justice John Roberts wrote in the Court’s **majority opinion**. “Instead, the Court simply holds that a faithful application of **precedent** and a fair reading of the record do not bear those concerns out here.”

Professor Mazo explains that Chief Justice Roberts was saying that the Court was just following the precedent set in *Gingles*.

In his **dissenting opinion**, Justice Clarence Thomas questioned whether Alabama should “intentionally” redraw districts so black voters can control seats proportional to their population numbers. “The law,” Justice Thomas wrote, “demands no such thing and, if it did, the Constitution would not permit it.” In his dissent, Justice Thomas maintains that the VRA only ever applied to laws that regulate access to the ballot box, not to redistricting.

### Alabama back in court

In July 2023, Alabama lawmakers approved a new congressional map that diminished the majority Black voting district established in the previous map to



## Hijab CONTINUED FROM PAGE SEVEN

in a press statement. “We certainly respect local school systems’ authority to set dress standards, and otherwise regulate their students, but

such rules cannot come at the cost of constitutional liberties. Religious discrimination has no place in American schools.”

### Current issues

In 2022, there was an issue at Mystic Valley Regional Charter School in Malden, MA. An eighth-grader was issued an infraction for violating the school’s dress code for wearing hijab. The school’s “Student Uniform Compliance Form” required girls who wear hijab to provide a letter of justification from clergy or risk receiving an infraction. The school eventually backed off the clergy letter requirement, saying the matter was handled poorly.

While multiple court decisions and federal and state laws protect wearing hijab in the U.S., many institutions, like the American Civil Liberties Union, continue to address persistent discrimination. •



1. According to the article, Iran requires women to wear hijab, while France and India want to ban the practice. Should a government be allowed any say in how its citizens—in these cases women—dress? Why or why not?
2. What dress code accommodations should schools grant? Should they only consider religious accommodation or others as well? Explain your answer.
3. The article makes the point that wearing hijab is highly visible. What other clothing or attire would be clearly visible signs of a particular religion?

## Glossary

**affirm**—to uphold, approve or confirm. **amicus brief**—a friend of the court brief, which is submitted by an entity with strong interests in a case but not a party in the case. **appealed**—when a decision from a lower court is reviewed by a higher court. **concurring opinion**—a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons. **dissenting opinion**—a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues. **gerrymandering**—manipulating the boundaries of a community to favor one political party or class over another. **jurisdiction**—authority to interpret or apply the law. **jurisprudence**—the philosophy of law. **majority opinion**—a statement written by a judge or justice that reflects the opinion reached by the majority of their colleagues. **nonpartisan**—not adhering to any established political group or party. **partisan**—someone who supports a particular political party or cause with great devotion. **plaintiff**—person or persons bringing a civil lawsuit against another person or entity. **plenary power**—absolute power to take action on a particular issue with no limitations. **precedent**—a legal case that will serve as a model for any future case dealing with the same issues. **secularism**—the principle of separation of the state from religious institutions. **sovereignty**—supremacy of authority over a defined area or population. **statute**—legislation that has been signed into law. **tenet**—principle or theory.