The Bill of Rights
The 9th & 10th Amendments

What is the 9th / 10th Amendment?

What are the controversies that these amendment have caused?
The 9th Amendment

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”

Themes:
- Did we miss anything (for the citizens)?
History Behind the 9th Amendment

- Some Americans feared that not all protected rights would be included in the finished Constitution (1787)

- “Unenumeratorate rights” = rights not specifically listed in the Constitution
Strict vs. Loose Interpretations

“Strict” Interpretation:
- If an right is not in the Constitution, its not a right
  - Amendment / new law
- The 9th & 10th Amends. gives judges / the national gov. too much power

“Loose” Interpretation:
- The 9th & 10th Amends. protects unlisted rights / powers
  - Part of checks / balances
- Many social issues can be resolved through the 9th & 10th Amends.
What has the Supreme Court said on the 9th Amendments?

- The Supreme Court has never offered a definitive ruling.

- The Court, instead, has used other Amendments w/ the 9th & 10th Amendment to make their rulings.
Example:

- Freedom of Association: Is it in the Constitution?

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; abridging the freedom of speech, of the press; or the right of the people peaceably to assemble, and to petition the Government.”
Does the 9th Amendment cover contraception?

*Griswold v. Connecticut* (1965)
Is abortion covered under the 9th Amendment?  
*Roe v. Wade* (1973)
Is sexual privacy / orientation covered?

Is the right to die protected by the 9th Amendment?
Dr. Jack Kevorkian (1928-2011)
You Don’t Know Jack (2010)
The 10th Amendment

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively...”

Themes:
- We kind of still miss the Articles of Confederation...
Some state leaders feared that the Federal government would use the Constitution to take away the powers of the states

States rights v. Federalism

“Implied Powers” = powers not specifically listed in the Constitution
Do state have the right to make their own laws under the 10th Amendment?

- The Supreme Court claims that a state’s right to legislate is covered under other parts of the Constitution.

- Most believe its covered officially under the 10th Amend.
The Nullification Crisis (1832)
The American Civil War (1861-65)
Is immigration covered?
Is education covered?
Is “medical” marijuana covered?
Does a state have control over their own National Guard troops?
What is the future of the 9th Amendment?

- Right now, the 9th Amendment is the center of major social debates in the US
  - Gay Rights
  - Abortion

- The vague language of the Amendment makes concrete arguments difficult
What is the future of the 10th Amendment?

- Right now, the 10th Amendment is the center of major debates over Federal power
  - Immigration
  - Drug Control

- The vague language of the Amendment makes concrete arguments difficult