**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**The United States Constitution: Limiting and Safeguarding Individual Rights- Benchmark 2.5**

**Directions: Either by yourself or in pairs, read the passages below and answer the questions that follow.**

The Framers of the U.S. Constitution wanted to create a federal government that was effective and powerful, but one that did not step on the rights of the individual or the powers of the states. By ensuring that the rights of individuals and the powers of states would be protected, this created a system where the powers of the federal government also became limited.

1. Based on this first paragraph, what do you think the meaning of **“limited government”** means?

In **Article 1, Section 9 of the U.S. Constitution**, there are three key individual rights that are protected, or safeguarded:

The first is contained in this statement:

*"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."*

**Habeas corpus** is an important individual right. *This statement in Article I, Section 9 means that an authority has to prove to a court why it is holding someone. If the government cannot show why a person is being held in jail, that person must be released.*

The second and third are in this statement:

*"No Bill of Attainder or ex post facto Law shall be passed."*

**A bill of attainder** is a bill written to punish only one person or one group of people. **An ex post facto law** is one that makes an act a crime after it has been committed.

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| 1. Based on the passage above, define the terms ***habeas corpus* and *ex post facto*** in your own words? 2. Why do you think the Framers determined that these were important rights to include in the U.S. Constitution? |

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| 1. Summarize why you think the Framers decided to protect the individual rights? |

**The Role of the Judicial Branch**

The judicial branch plays an important role in how the U.S. Constitution is interpreted and the ways in which individual rights are safeguarded (protected) and limited. The Framers of the U.S. Constitution designed an independent judiciary where the judicial branch would have freedom from the executive and legislative branches. The constitution designed the judiciary to make sure that the executive and legislative branches would not be able to interfere in the judicial branches by either firing judges for decisions they did not like or reducing their salaries. This allowed the judges to be free from legislative or executive interference.

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| 1. Based on the passage above, what do you think the term “independent judiciary” means in your own words? |

In 1919, the Supreme Court developed the “**balancing test**”. The balancing test focuses on individual rights and the public interest and allows rights to be restricted, or limited, when the public interest in threatened. The **public interest** is something that has common benefit to the community or public. Justice Oliver Wendell Holmes stated in his opinion that “the most stringent [strict] protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. […]”

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| 1. What do you think was Justice Holmes’ reasoning for stating that shouting “fire!” in a theatre would not be covered by the First Amendment? 2. How does this limit on individual rights impact social behavior? |

The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit individual rights, specifically freedom of speech and freedom of the press. In general, there must be a balance of individual rights, the rights of others, and the common good.

***Listed below are additional criteria used to limit freedom of speech and freedom of the press***.

* Clear and Present Danger – Will this act of speech create a dangerous situation?
* Fighting Words – Will this act of speech create a violent situation?
* Libel – Is this information false or does it put true information in a context that makes it look misleading?
* Obscene Material – Is this material inappropriate for adults and children to see in public?
* Conflict with Government Interests – During times of war the government may limit speech due to national security.

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| 1. From the passage above, **list two reasons** why a judge may limit a person’s freedom of the press or right to free speech? 2. What do you think are the reasons behind the limits placed on our first amendment rights of free press and speech? 3. What impact might there be on our behavior in society due to these limits on our rights? |