

# Constitutional Law



# Constitutional Law

---

## Structure and Rights in Our Federal System

EIGHTH EDITION

**William C. Banks**

BOARD OF ADVISORS DISTINGUISHED PROFESSOR  
PROFESSOR OF LAW EMERITUS  
SYRACUSE UNIVERSITY COLLEGE OF LAW

**Daan Braveman**

PRESIDENT EMERITUS NAZARETH UNIVERSITY  
FORMER DEAN SYRACUSE UNIVERSITY COLLEGE OF LAW

**Rodney A. Smolla**

PRESIDENT  
VERMONT LAW AND GRADUATE SCHOOL



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2024  
Carolina Academic Press  
All Rights Reserved

ISBN 978-1-5310-1266-3  
eISBN 978-1-5310-1267-0  
LCCN 2023944568

Carolina Academic Press, LLC  
700 Kent Street  
Durham, NC 27701  
(919) 489-7486  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*For our families*



# Contents

---

Table of Cases	xvii
Preface	xxix
<b>Chapter 1 · The Origins: “We the People” — Where Does Power Reside in Our Constitutional System?</b>	<b>3</b>
§ 1.01 Introduction	3
§ 1.02 An Historical Prologue to the Constitution	4
A. Pre-Colonial Constitutional Theory	4
B. From the Colonies to the Convention	4
C. The Constitutional Convention of 1787	6
§ 1.03 Conceptions of Sovereignty: The National Government, the States, and the People	8
<i>A Case Study of Gun Control</i>	9
Notes and Questions	11
§ 1.04 The Final Word? — The Judicial Review Doctrine	12
<i>Marbury v. Madison</i>	13
Notes and Questions	21
§ 1.05 Judicial Review of Executive Action	23
<i>United States v. Nixon</i>	23
<i>Trump v. Vance</i>	30
Notes and Questions	33
Problem A	36
§ 1.06 Judicial Review of State Action	37
<i>Martin v. Hunter’s Lessee</i>	37
Notes and Questions	41
§ 1.07 Contemporary Sovereignty Problems	42
<i>Cooper v. Aaron</i>	42
Notes and Questions	44
<b>Chapter 2 · Separation of Powers: Constitutional Checks and Balances</b>	<b>47</b>
§ 2.01 An Historical Overview	47
A. The English Heritage	47
B. Bringing Separation Theory to America	49
C. From the Convention to Current Doctrine	51

D. The Court Walks a Tightrope: Accommodating Separation's Diverse Goals	53
§ 2.02 How Are Separation of Powers Disputes Decided? — An Introductory Case Study	55
<i>Youngstown Sheet &amp; Tube Co. v. Sawyer [The Steel Seizure Case]</i>	55
Notes and Questions	67
Problem A	69
§ 2.03 Limits on the Elected Branches: Oversight and Accountability in the Administrative State	69
A. Introduction	69
B. Delegation of Legislative Power	70
<i>Gundy v. United States</i>	72
Problem B	77
Notes and Questions	78
C. Too Much Oversight: The Legislative Veto	81
<i>Immigration and Naturalization Service v. Chadha</i>	81
Notes and Questions	95
D. Executive Control Over the Appointment and Removal of Officials	96
<i>Morrison v. Olson</i>	96
<i>Seila Law LLC v. Consumer Financial Protection Bureau</i>	100
Notes and Questions	103
Problem C	105
E. Line Item Veto	106
<i>Clinton v. City of New York</i>	106
Notes and Questions	115
F. Executive Privilege, Presidential Immunity from Lawsuit, and Congress' Power of Impeachment	115
<i>Trump v. Mazars USA, LLP</i>	116
Notes and Questions	120
<i>Clinton v. Jones</i>	121
Notes and Questions	123
§ 2.04 Limits on the Elected Branches: Foreign Relations and the War Powers	125
A. Foreign Relations Powers	125
<i>United States v. Curtiss-Wright Export Corporation</i>	125
<i>Zivotofsky v. Kerry</i>	128
Notes and Questions	136
B. War Powers	140
<i>Prize Cases</i>	140
Notes and Questions	142
<i>Hamdi v. Rumsfeld</i>	143
Problem D	159



§ 2.05 Limits on Judicial Power — The Justiciability Doctrines	159
A. Introduction	159
1. Legitimacy	160
2. Efficiency	161
3. Tyranny	162
B. Political Questions	162
<i>Powell v. McCormack</i>	164
<i>Nixon v. United States</i>	166
Notes and Questions	170
C. Standing to Sue	170
Notes and Questions — Citizen Plaintiffs	171
Notes and Questions — Congressional Plaintiffs	173
Notes and Questions — States as Plaintiffs	174
D. Ripeness	176
<i>Trump v. New York</i>	176
Notes and Questions	181
Problem E	181
<b>Chapter 3 · Federalism Limits on Federal Courts</b>	<b>183</b>
§ 3.01 Historical Overview	183
A. The What and Why of Federalism	183
B. The Constitutional Convention	185
1. Federalism Concerns and the National Legislature	186
2. Federalism Concerns and the National Judiciary	186
3. Federalism Concerns and the National Executive	187
C. The Ratification Debates	188
D. Federalism From the 1780s to the Twenty-First Century	190
1. The Pre-Civil War Period	191
2. From the Civil War to the New Deal	192
3. Modern Federalism	194
E. The Role of the Tenth Amendment and “Considerations of Federalism” in Deciding Cases	195
§ 3.02 Introduction: Federalism and the Judiciary	196
§ 3.03 Eleventh Amendment	198
<i>Hans v. Louisiana</i>	198
Notes and Questions	200
<i>Ex parte Young</i>	201
Notes and Questions	205
<i>Edelman v. Jordan</i>	205
Notes and Questions	212
<i>Seminole Tribe of Florida v. Florida</i>	216
Notes and Questions	229
Problem A	231

<b>Chapter 4 · Federalism Limits on the Elected Branches and on the States</b>	<b>233</b>
§ 4.01 Introduction	233
§ 4.02 Scope of Federal Power	236
<i>McCulloch v. Maryland</i>	236
Notes and Questions	243
Problem A	244
§ 4.03 Congressional Power to Regulate Interstate Commerce	245
A. The Emergence of Dual Sovereignty	245
<i>Gibbons v. Ogden</i>	245
Notes and Questions	248
<i>United States v. E.C. Knight Co.</i>	249
Notes and Questions	252
<i>Hammer v. Dagenhart</i>	254
Notes and Questions	258
Problem B	259
B. The New Deal and Beyond	259
<i>A.L.A. Schechter Poultry Corporation v. United States</i>	259
Notes and Questions	263
<i>United States v. Darby</i>	266
<i>Katzenbach v. McClung</i>	270
Notes and Questions	273
<i>United States v. Lopez</i>	274
<i>Gonzales v. Raich</i>	284
Notes and Questions	298
Problem C	303
§ 4.04 Congressional Power to Enforce Civil Rights	304
<i>Tennessee v. Lane</i>	309
Notes and Questions	320
§ 4.05 Tenth Amendment Limits on Congressional Power?	320
<i>Garcia v. San Antonio Metropolitan Transit Authority</i>	322
Notes and Questions	326
<i>New York v. United States</i>	326
Notes and Questions	334
<i>Printz v. United States</i>	335
Notes and Questions	346
§ 4.06 Putting the Pieces Together: Commerce Clause, Necessary and Proper Clause, Spending Clause	350
<i>National Federation of Independent Business v. Sibelius</i>	351
Notes and Questions	365
Problem D	365
§ 4.07 Constitutional Limits on State Regulation of Commerce: The Dormant Commerce Clause	366
<i>Gibbons v. Ogden</i>	368

<i>City of Philadelphia v. New Jersey</i>	369
Notes and Questions	372
<i>C &amp; A Carbone, Ind. v. Town of Clarkstown</i>	374
<i>United Haulers Assn, Inc. v. Oneida-Herkimer Solid Waste Management Authority</i>	376
Notes and Questions	378
Problem E	379
<b>Chapter 5 · Public and Private Domain</b>	<b>381</b>
§ 5.01 Introduction	381
§ 5.02 Prohibiting Governmental Encroachments on Individual Rights	390
A. The Bill of Rights	390
<i>Barron v. The Mayor and City Council of Baltimore</i>	390
Notes and Questions	392
B. The Civil War Amendments	392
<i>Slaughter-House Cases</i>	392
Notes and Questions	404
Problem A	407
§ 5.03 Prohibiting Encroachments on Individual Rights by Private Parties: The State Action Doctrine	408
<i>The Civil Rights Cases</i>	408
Notes and Questions	415
<i>Jackson v. Metropolitan Edison Company</i>	416
<i>Flagg Bros., Inc. v. Brooks</i>	421
<i>Lugar v. Edmondson Oil Co.</i>	427
Notes and Questions	430
Problem B	439
<b>Chapter 6 · Exclusion and Equal Protection</b>	<b>441</b>
§ 6.01 Introduction	441
A. “We the People”	441
<i>Johnson v. McIntosh</i>	441
<i>Dred Scott v. Sandford</i>	444
Notes and Questions	448
B. Exclusion and the Equal Protection Clause	449
§ 6.02 Social and Economic Classification: Traditional Approach	452
<i>Railway Express Agency v. New York</i>	452
Notes and Questions	453
<i>Massachusetts Board of Retirement v. Murgia</i>	454
Notes and Questions	457
<i>San Antonio Independent School District v. Rodriguez</i>	459
Notes and Questions	463
Problem A	464

§ 6.03	Racial Classification	465
	A. Constitutional Standard	465
	<i>Plessy v. Ferguson</i>	465
	<i>Korematsu v. United States</i>	470
	Notes and Questions	477
	<i>Brown v. Board of Education [Brown I]</i>	479
	Notes and Questions	481
	<i>Brown v. Board of Education [Brown II]</i>	483
	Notes and Questions	484
	<i>Loving v. Virginia</i>	484
	Notes and Questions	487
	B. Discriminatory Intent or Impact?	487
	<i>Washington v. Davis</i>	487
	Notes and Questions	492
	Problem B	495
	C. Affirmative Action	496
	<i>Students for Fair Admissions v. President and Fellows</i> <i>of Harvard College</i>	498
	Notes and Questions	520
	Problem C	520
§ 6.04	Gender Classification	521
	A. Constitutional Standard	521
	<i>Goesaert v. Cleary</i>	521
	Notes and Questions	522
	<i>Frontiero v. Richardson</i>	522
	Notes and Questions	528
	<i>United States v. Virginia</i>	534
	Notes and Questions	543
	<i>Romer v. Evans</i>	546
	Notes and Questions	549
	B. Discriminatory Intent or Impact?	550
	<i>Personnel Administrator of Massachusetts v. Feeney</i>	550
	Notes and Questions	556
§ 6.05	Conclusion	556
	<i>City of Cleburne v. Cleburne Living Center</i>	557
	Notes and Questions	566
	Problem D	567
<b>Chapter 7</b>	<b>· Economic and Social Rights</b>	<b>569</b>
§ 7.01	The Rise, Fall, and Resurrection of Entrepreneurial Liberty	569
	<i>Lochner v. New York</i>	569
	<i>Williamson v. Lee Optical Co.</i>	576
	Notes and Questions	578

§ 7.02 Privacy and the Right to Be Let Alone	580
<i>Buck v. Bell</i>	580
<i>Griswold v. Connecticut</i>	582
Notes and Questions	590
<i>Dobbs v. Jackson Women's Health Organization</i>	597
Notes and Questions	619
Problem A	619
<i>Obergefell v. Hodges</i>	620
Notes and Question	635
Problem B	635
§ 7.03 Entitlements and the Negative Constitution	636
<i>Dandridge v. Williams</i>	636
<i>DeShaney v. Winnebago County Department of         Social Services</i>	642
Notes and Questions	650
§ 7.04 Due Process in the Administrative State	651
<i>Goldberg v. Kelly</i>	651
<i>Board of Regents v. Roth</i>	655
<i>Cleveland Board of Education v. Loudermill</i>	658
Notes and Questions	663
Problem C	665
§ 7.05 The Right to Bear Arms	666
<i>District of Columbia v. Heller</i>	666
Notes and Questions	680
<b>Chapter 8 · Religion</b>	<b>685</b>
§ 8.01 What Does “Religion” Mean?	685
§ 8.02 Establishment of Religion	686
A. Rituals and Symbols in the Public Arena	686
<i>Town of Greece, New York v. Galloway</i>	690
<i>American Legion v. American Humanist Association</i>	702
Notes and Questions	707
B. Rituals and Symbols in School Settings	708
<i>Santa Fe Independent School District v. Doe</i>	709
<i>Kennedy v. Bremerton School District</i>	715
Notes and Questions	721
C. Economic Aid to Religion	725
<i>Everson v. Board of Education</i>	725
<i>Zelman v. Simmons-Harris</i>	730
Notes and Questions	736
§ 8.03 Free Exercise of Religion	736
A. Discrimination or Hostility	736
B. Neutral Laws That Burden Religion	740

	<i>Reynolds v. United States</i>	740
	<i>Sherbert v. Verner</i>	742
	<i>Wisconsin v. Yoder</i>	747
	<i>Employment Division, Department of Human Resources v. Smith</i>	751
	Notes and Questions	756
	Problem A	762
§ 8.04	Religious Disputes in Secular Courts	762
	<i>Hosanna-Tabor Evangelical Lutheran Church &amp; School v. Equal Employment Opportunity Commission</i>	763
	Notes and Questions	771
<b>Chapter 9</b>	<b>Freedom of Speech and Association</b>	<b>773</b>
§ 9.01	Competing Conceptions of Freedom of Speech	773
	A. Dueling Visions	773
	B. The Order and Morality Theory	774
	<i>Chaplinsky v. New Hampshire</i>	774
	<i>Beauharnais v. Illinois</i>	776
	C. The Marketplace Theory	782
	<i>Abrams v. United States</i>	782
	<i>Whitney v. California</i>	788
	Notes and Questions	792
§ 9.02	Speech and Lawless Activity	797
	A. Incitement	797
	<i>Brandenburg v. Ohio</i>	797
	Notes and Questions	800
	Problem A	803
	B. True Threats	804
	<i>Virginia v. Black</i>	804
	Notes and Questions	822
§ 9.03	Vulgar, Graphic, and Offensive Speech	824
	A. Vulgarity	824
	<i>Cohen v. California</i>	824
	<i>Federal Communications Commission v. Pacifica Foundation</i>	829
	Notes and Questions	835
	B. Graphically Offensive Speech	836
	<i>Texas v. Johnson</i>	836
	<i>United States v. Stevens</i>	847
	Notes and Questions	854
§ 9.04	Content-Based, Viewpoint-Based, and Content-Neutral Regulation	858
	A. Content and Viewpoint Discrimination	858
	B. Incidental Burdens on Speech and the <i>O'Brien</i> Principle	859
	<i>United States v. O'Brien</i>	859

C. Evidentiary Use of Speech to Prove the Elements of an Offense	864
<i>Wisconsin v. Mitchell</i>	864
Notes and Questions	869
Problem B	870
§ 9.05 Obscene and Pornographic Speech	870
A. Obscenity in the General Marketplace	870
<i>Miller v. California</i>	870
<i>Paris Adult Theatre I v. Slaton</i>	874
Notes and Questions	877
B. Obscenity in the Privacy of the Home	879
<i>Stanley v. Georgia</i>	879
Notes and Questions	882
C. Pornography and the Protection of Children	882
<i>Ashcroft v. Free Speech Coalition</i>	883
<i>Reno v. American Civil Liberties Union</i>	889
Notes and Questions	895
D. Erotic Dance Clubs, Public Nudity, and the Secondary Effects Doctrine	896
§ 9.06 Free Speech and Tort Liability	898
A. Defamation	898
<i>New York Times Company v. Sullivan</i>	898
<i>McKee v. Cosby</i>	908
Notes and Questions	910
B. False Light	913
C. Publication of Private Facts	914
D. Intrusion	917
E. Appropriation and Right of Publicity	919
F. Infliction of Emotional Distress	920
<i>Hustler Magazine v. Falwell</i>	920
Notes and Questions	929
§ 9.07 Prior Restraints	929
<i>New York Times Company v. United States</i>	929
Notes and Questions	941
Problem C	942
§ 9.08 Commercial Speech	943
<i>44 Liquormart, Inc. v. Rhode Island</i>	943
Notes and Questions	957
§ 9.09 Campaign Finance and the Political Process	961
<i>Citizens United v. Federal Election Commission</i>	961
§ 9.10 Public Forum Law	972
<i>Widmar v. Vincent</i>	972
<i>Frisby v. Schultz</i>	976
Notes and Questions	983

§ 9.11 Government Speech	984
<i>Shurtleff v. City of Boston</i>	985
§ 9.12 Government Funding	994
<i>Rust v. Sullivan</i>	994
<i>Rosenberger v. Rector and Visitors of University of Virginia</i>	1001
<i>Legal Services Corporation v. Valezquez</i>	1004
§ 9.13 Government Employees	1012
A. Discipline Against Employees	1012
B. Political Patronage	1017
<i>Branti v. Finkel</i>	1017
§ 9.14 Education	1019
<i>Morse v. Frederick</i>	1019
Notes and Questions	1030
Problem D	1031
<i>Mahanoy Area School District v. B.L. by &amp; through Levy</i>	1031
Notes and Questions	1041
Problem E	1042
§ 9.15 The Legal System	1042
A. Reporting on Judicial Proceedings	1042
B. Controlling the Speech of Lawyers	1043
§ 9.16 Anonymous Speech	1044
§ 9.17 Forced Speech	1046
<i>303 Creative LLC v. Elenis</i>	1046
Notes and Questions	1050
§ 9.18 Freedom of Expressive Association	1052
§ 9.19 Journalism and the First Amendment	1057
A. The Press Clause	1057
B. Access to Institutions and Events	1060
C. Reporters' Privilege	1061
<b>Appendix · The Constitution of the United States of America</b>	<b>1063</b>
<b>Index</b>	<b>1081</b>



# Table of Cases

---

- 12 200-ft. Reels of Super 8MM. Film, United States v., 320
- 303 Creative LLC v. Elenis United States Supreme Court, 1046
- 44 Liquormart, Inc. v. Rhode Island, 943
- A.L.A. Schechter Poultry Corporation v. United States, 259
- Abbott Laboratories v. Gardner, 180
- Ableman v. Booth, 44
- Aboud v. Detroit Board of Education, 1051
- Abrams v. United States, 782
- Adair v. United States, 579
- Adarand Constructors, Inc. v. Pena, 496, 501, 507
- Adkins v. Children's Hospital, 579
- Allegheny, County of, v. American Civil Liberties Union Greater Pittsburgh Chapter, 689, 700
- Allen v. Wright, 171, 173
- Allgeyer v. Louisiana, 569
- Already, LLC v. Nike, Inc., 177
- Alvarez, United States v., 513, 854
- American Ins. Assn. v. Garamendi, 131, 136, 137, 139
- American Legion v. American Humanist Association 702
- American Mfrs. Mut. Ins. Co. v. Sullivan, 437
- Anderson v. Dunn, 779
- Area Educ. Telcoms. Consortium v. FCC, 894
- Arkansas Writers' Project, Inc. v. Ragland, 996, 1007
- Arlington Heights v. Metropolitan Housing Dev. Corp., 551, 553
- Arnett v. Kennedy, 659, 663
- Arthrex, Inc., United States v., 104
- Ashcroft v. Free Speech Coalition, 883
- Associated Press v. Walker, 912
- Atascadero State Hospital v. Scanlon, 213
- Austin v. Michigan Chamber of Commerce, 968
- Babbitt v. Farm Workers, 179
- Baker v. Carr, 24, 163
- Baker v. Nelson, 624
- Barclay v. Florida, 866
- Barnes v. Glen Theatre, Inc., 896
- Barron v. The Mayor and City Council of Baltimore, 390
- Barron ex rel. Tiernan v. Mayor of Baltimore, 602
- Bartnicki v. Vopper, 915
- Bass, United States v., 276
- Bates v. State Bar of Ariz., 945
- Batson v. Kentucky, 531
- Baumgartner v. United States, 922
- Beal v. Doe, 424
- Beauharnais v. Illinois, 776
- Belmont, United States v., 138
- Berisha v. Lawson, 910
- Bethel School Dist. No. 403 v. Fraser, 1020, 1033
- Biden v. Nebraska, 79, 175
- Bigelow v. Virginia, 944, 945
- Bishop v. Wood, 659

- Blatchford v. Native Village of Noatak, 227
- Blum v. Yaretsky, 437
- Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 848
- Board of Directors of Rotary International v. Rotary Club of Duarte, 1053
- Board of Educ. v. Earls, 1024
- Board of Educ. of Okla. City Pub. Schs., Indep. Sch. Dist. No. 89 v. Dowell, 484
- Board of Regents of Univ. of Wis. System v. Southworth, 710, 1006
- Board of Regents v. Roth, 457, 655
- Board of Trustees v. Garrett, 230, 310
- Board of Trustees, State Univ. of N.Y. v. Fox, 950
- Boddie v. Connecticut, 312
- Boerne, City of, v. Flores, 304, 311, 316, 416, 757
- Bolger v. Youngs Drug Products Corp., 894
- Bolling v. Sharpe, 449, 450, 481
- Bond v. Floyd, 1029
- Boos v. Barry, 840
- Bose Corp. v. Consumers Union of United States, Inc., 922
- Bostock v. Clayton County, 549
- Bowers v. DeVito, 463
- Bowers v. Hardwick, 623
- Bowsher v. Synar, 106, 336
- Boy Scouts of America v. Dale, 1046, 1055
- Bradwell v. Illinois, 407, 522
- Brandenburg v. Ohio, 797, 800, 945
- Branti v. Finkel, 1017
- Branzburg v. Hayes, 1061
- Braunfeld v. Brown, 743, 760
- Bray v. Alexandria Women's Health Clinic, 601
- Brentwood Academy v. Tennessee Secondary School Athletic Association, 435
- Brig Aurora, The, 71
- Broadrick v. Oklahoma, 888, 982
- Brown v. Board of Education I, 42, 197, 460, 479, 512, 619
- Brown v. Board of Education II, 194, 483, 500, 508
- Brown v. EPA, 342
- Brown v. North Carolina, 533
- Brown, United States v., 54
- Brown-Forman Distillers Corporation v. New York State Liquor Authority, 372
- Buck v. Bell, 451, 580
- Buckley v. Valeo, 121, 961
- Bunting v. Oregon, 579
- Burke, United States v., 1062
- Butler, United States v., 264, 357
- Byrd v. Raines, 106
- C & A Carbone, Ind. v. Town of Clarkstown, 374
- Caetano v. Massachusetts, 681
- Cafeteria & Restaurant Workers Union v. McElroy, 652
- Califano v. Webster, 536
- California Federal Sav. & Loan Ass'n v. Guerra, 536
- California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 950
- California v. Texas, 365
- Calvary Chapel Dayton Valley v. Sisolak, 761
- Cantrell v. Forest City Publishing Co., 914
- Cantwell v. Connecticut, 407, 743, 775, 777
- Capital Cities Cable, Inc. v. Crisp, 950
- Capitol Square Review and Advisory Bd. v. Pinette, 807
- Carey v. Brown, 976
- Carey v. Population Services Int'l, 596, 894, 945, 946
- Carolene Products Co., United States v., 388, 389, 451
- Carroll Towing Co., United States v., 795
- Carson v. Makin, 1048

- Carter v. Carter Coal Co., 72, 264  
 Castaneda v. Partida, 492  
 Castle Rock, Town of, v. Gonzalez, 665  
 Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 946, 948  
 Champion v. Ames (The Lottery Case), 253  
 Chaplinsky v. New Hampshire, 774  
 Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 137  
 Child Labor Tax Case (Drexel Furniture), 357  
 Chisholm v. Georgia, 199, 202  
 Christian Legal Society Chapter of the University of California, Hastings v. Martinez, 1055  
 Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 718  
 Cincinnati v. Discovery Network, Inc., 948  
 Citizens United v. Federal Election Commission, 961  
 City of (See Name of City)  
 Civil Rights Cases, 307, 408, 466  
 Clapper v. Amnesty International USA, 171, 180  
 Clark v. Jeter, 533  
 Cleburne v. Cleburne Living Center, Inc., 312, 533, 557  
 Cleland's Memoirs of a Woman of Pleasure v. Attorney General of Mass., 886  
 Cleveland Board of Education v. Loudermill, 658  
 Clinton v. City of New York, 106  
 Clinton v. Jones, 121  
 Cohen v. California, 824, 831  
 Cohen v. Cowles Media Co., 918  
 Cohens v. Virginia, 22  
 Collins v. Yellen, 105  
 Committee for Public Education v. Nyquist, 973  
 Comstock, United States v., 350, 351  
 Connick v. Myers, 1012  
 Coombs, United States v., 292  
 Cooper v. Aaron, 42  
 Coppage v. Kansas, 579  
 Cornelius v. NAACP Legal Defense and Educ. Fund, 984  
 Counterman v. Colorado, 823  
 County of (See Name of County)  
 Cox v. Louisiana, 866  
 Cox Broadcasting Corp. v. Cohn, 914  
 Curtis Publishing Co. v. Butts, 912  
 Curtiss-Wright Export Corporation, United States v., 125  
 Cutter v. Wilkinson, 765  
  
 Dames & Moore v. Regan, 138, 158  
 Dandridge v. Williams, 451, 636  
 Darby, United States v., 191, 266, 293, 322  
 Dartmouth College v. Woodward, 382  
 Davis v. Beason, 685  
 Dawson v. Delaware, 866  
 De Jonge v. Oregon, 796  
 Dean Milk Co. v. Madison, 374  
 Debs v. United States, 793  
 Debs, In re, 54  
 Dellinger, United States v., 1029  
 Dellmuth v. Muth, 213  
 Dennis v. United States, 795, 799  
 Department of Commerce v. New York, 175  
 Department of Commerce v. United States House of Representatives, 179  
 DeShaney v. Winnebago County Department of Social Services, 463, 642  
 Dillon v. Gloss, 167  
 District of Columbia v. Heller, 10, 666, 684  
 Dobbs v. Jackson Women's Health Organization, 597, 681  
 Doe v. University of Michigan, 1041  
 Dred Scott v. Sandford, 382, 444  
 Drexel Furniture (Child Labor Tax Case), 357

- Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 913, 925
- Duncan v. Louisiana, 623
- Dunn v. Blumstein, 312
- E.C. Knight Co., United States v., 249
- Eastland v. United States Servicemen's Fund, 118
- Edelman v. Jordan, 205
- Edge Broadcasting Co., United States v., 951
- Edmond v. United States, 103
- Edmonson v. Leesville Concrete Company, 430, 502
- Edwards v. Aguillard, 724
- Eisenstadt v. Baird, 592, 596, 613
- Elk v. Wilkins, 449
- Elliott v. Commonwealth, 822
- Elrod v. Burns, 1017
- Employment Division, Department of Human Resources v. Smith, 751, 757
- Engel v. Vitale, 694, 720, 722
- Epperson v. Arkansas, 723
- Erie, City of, v. Pap's A.M., 896
- Espinoza v. Montana Department of Revenue, 740
- Estate of (See Name of Deceased)
- Estelle v. Gamble, 645
- Eu v. San Francisco County Democratic Central Comm., 963
- Evans v. Newton, 426
- Everson v. Board of Education, 725
- Ewing v. Mytinger & Casselberry, Inc., 660
- Ex parte (See Name of Relator)
- F.S. Royster Guano Co. v. Virginia, 451
- Fairfax's Devisee v. Hunter's Lessee, 37
- Faretta v. California, 312
- FCC v. Beach Communications, Inc., 458
- FCC v. Pacifica Foundation, 829, 890, 892, 924
- Federal Election Comm'n v. Wisconsin Right to Life, Inc., 961
- Feiner v. New York, 801, 826
- FERC v. Mississippi, 278
- First Nat. Bank of Boston v. Bellotti, 964, 1059
- Fisher v. University of Texas at Austin (2013), 510
- Fisher v. University of Texas at Austin (2016), 510, 512, 515
- Fitzpatrick v. Bitzer, 219, 230, 304
- Flagg Bros., Inc. v. Brooks, 421, 437
- Fletcher v. Peck, 382
- Florida Bar v. Went For It, Inc., 947
- Florida Star v. B.J.F., 915
- Food Lion v. Capital Cities/ABC, Inc., 918
- Ford Motor Co. v. Department of Treasury, 207
- Frazer v. Illinois Dep't of Employment Sec., 685, 759
- Free Enterprise Fund v. Public Company Accounting Oversight Bd., 101
- Freeman v. Pitts, 484
- Friedman v. Rogers, 946
- Frisby v. Schultz, 976
- Frohwerk v. United States, 793
- Frontiero v. Richardson, 522, 531
- Frost & Frost Trucking Co. v. Railroad Comm'n of Cal., 953
- Fuentes v. Shevin, 422
- Fulton v. City of Philadelphia, Pennsylvania, 759
- Garcetti v. Ceballos, 717, 1012
- Garcia v. San Antonio Metropolitan Transit Authority, 322
- Garrison v. Louisiana, 923
- Gayle v. Browder, 481
- Geduldig v. Aiello, 450, 601
- Gentile v. State Bar of Nevada, 1043
- Georgia v. McCollum, 435
- Gertz v. Robert Welch, Inc., 831, 912, 922

- Gibbons v. Ogden, 245, 368, 600, 667  
Ginsberg v. New York (1968), 879, 890  
Ginsberg v. New York (1972), 832  
Gitlow v. New York, 794  
Glickman v. Wileman Brothers & Elliott, Inc., 959  
Goesaert v. Cleary, 521  
Goldberg v. Kelly, 208, 651, 661  
Goldman v. Weinberger, 761  
Gonzales v. Carhart, 600  
Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 758  
Gonzales v. Raich, 284  
Goodridge v. Dep't of Pub. Health, 625  
Graham v. Richardson, 208  
Grand Jury Subpoena, Judith Miller, In re, 1062  
Granholt v. Heald, 372  
Gratz v. Bollinger, 500  
Greece, New York, Town of, v. Galloway, 690  
Green v. County School, 484  
Green v. Mansour, 213  
Gregory v. Ashcroft, 348  
Griswold v. Connecticut, 582, 596, 613  
Grutter v. Bollinger, 496, 501, 503, 505, 510, 512, 514  
Guest, United States v., 416  
Gundy v. United States, 72  
  
H.P. Hood & Sons v. DuMond, 233, 234, 235  
Haaland v. Brackeen, 174, 350  
Hague v. CIO, 983  
Haig v. Agee, 139  
Hamdi v. Rumsfeld, 143  
Hammer v. Dagenhart, 254  
Hans v. Louisiana, 198  
Harris v. McRae, 996  
Haupt v. United States, 868  
Hazelwood School Dist. v. Kuhlmeier, 709, 1023, 1033  
Hazelwood School Dist. v. United States, 492  
  
Healy v. James, 1002  
Heart of Atlanta Motel v. United States, 270, 275, 322, 1050  
Herveling v. Hallock, 220  
Hernandez v. Texas, 492  
Herndon v. Lowry, 796  
Hess v. Indiana, 800  
Hipolite Egg Co. v. United States, 255  
Hirabayashi v. United States, 471  
Hishon v. King & Spalding, 867  
Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 275, 322, 323  
Hoke v. United States, 255  
Holden v. Hardy, 569  
Holmes v. Atlanta, 481  
Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 763  
Houchins v. KQED, Inc., 1060  
Hudgens v. NLRB, 438  
Humphrey's Executor v. United States, 96, 101  
Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 1047, 1053, 1055  
Hustler Magazine v. Falwell, 920  
  
Immigration and Naturalization Service v. Chadha, 81  
In re (See Name of Party or Matter)  
Iota XI Chapter of Sigma Chi Fraternity v. George Mason University, 1041  
  
J.E.B. v. Alabama, 531, 536  
J.W. Hampton, Jr. & Co. v. United States, 72  
Jackson v. Indiana, 313  
Jackson v. Metropolitan Edison Company, 416, 437  
Jackson v. Virginia, 820  
Jackson Women's Health Org. v. Currier, 600  
Jacobellis v. Ohio, 879

- Jacobson v. Massachusetts, 581  
Jaffree v. Board of School Commissioners of Mobile County, 407  
Janus v. American Federation of State, City & Municipal Employees, Council 31, 1051  
Jefferson v. Hackney, 488  
Jett v. Dallas Independent School Dist., 807  
Johnson v. California, 501  
Johnson v. McIntosh, 441  
Jones v. Alfred H. Mayer Co., 416, 1050  
Jones v. United States, 299
- Kadrmaz v. Dickinson Public Schools, 548  
Kahriger, United States v., 357  
Karcher v. Islamic Rep. of Iran, 159  
Katzenbach v. McClung, 270, 275  
Katzenbach v. Morgan, 304, 416  
Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America, 766  
Kennedy v. Bremerton School District, 715  
Keyishian v. Board of Regents, State Univ. of N.Y., 1002  
Kilbourn v. Thompson, 120  
Kimel v. Florida Board of Regents, 316  
Kirchberg v. Feenstra, 532  
Kitchen v. Herbert, 628  
Klein, United States v., 54  
Kois v. Wisconsin, 886  
Korematsu v. United States, 470, 478  
Kotch v. Board of River Pilot Commissioners, 454
- Laird v. Tatum, 181  
Lander v. Seaver, 1040  
Landmark Communications, Inc. v. Virginia, 801  
Lane Co. v. Oregon, 251  
Larkin v. Grendel's Den, Inc., 707
- Lassiter v. Northampton County Bd. of Elections, 305  
Lawrence v. Texas, 613, 623  
Lee v. Weisman, 697, 700  
Legal Services Corporation v. Valezquez, 1004  
Lemon v. Kurtzman, 490, 687, 973  
Levy v. Louisiana, 640  
Linmark Associates, Inc. v. Willingboro, 945, 946  
Lochner v. New York, 564, 569, 603, 629  
Locke v. Davey, 739  
Logan v. Zimmerman Brush Co., 659, 660  
Lopez, United States v., 274, 291, 293  
Lottery Case (Champion v. Ames), 253  
Louisiana v. Biden, 79  
Louisiana v. United States, 539  
Lovett, United States v., 54  
Loving v. Virginia, 484, 605, 624  
Lucia v. Securities and Exchange Commission, 104  
Lugar v. Edmondson Oil Co., 427, 437  
Lujan v. Defenders of Wildlife, 171, 172, 179  
Lynch v. Donnelly, 688  
Lyng v. Automobile Workers, 1010
- M.L.B. v. S.L.J., 312  
Mahanoy Area School District v. B.L. by & through Levy, 1031  
Maher v. Roe, 996, 1010  
Manhattan Community Access Corp. v. Halleck, 436  
Marbury v. Madison, 13, 849  
Marsh v. Alabama, 422, 437  
Marsh v. Chambers, 336  
Marshall Field & Co. v. Clark, 71, 110  
Marshall v. Gordon, 26  
Martin v. Hunter's Lessee, 37, 607  
Martinez v. California, 645  
Massachusetts Board of Retirement v. Murgia, 454

- Massachusetts v. Environmental Protection Agency, 174
- Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 737, 1048
- Matal v. Tam, 987, 993
- Mathews v. Eldridge, 147, 660, 664
- McAuliffe v. Mayor of New Bedford, 1012
- McCleskey v. Kemp, 492
- McCollum v. Board of Education, 721
- McConnell v. Federal Election Comm'n, 972
- McCreary County Kentucky v. American Civil Liberties Union of Kentucky, 688
- McCulloch v. Maryland, 26, 236, 614, 682
- McDaniel v. Paty, 739
- McDonald v. Chicago, 10, 602, 680, 682
- McGowan v. Maryland, 707
- McGrain v. Daugherty, 98, 117
- McIntyre v. Ohio Elections Commission, 955, 1044
- McKee v. Cosby, 908
- McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, 229
- McLaurin v. Oklahoma State Regents, 480
- Members of City Council v. Taxpayers for Vincent, 979
- Metromedia, Inc. v. San Diego, 951
- Meyer v. State of Nebraska, 582, 590
- Miami Herald Publishing Co. v. Tornillo, 832
- Milkovich v. Lorain Journal Co., 913
- Miller v. California, 870, 893
- Miller, United States v., 670, 672, 678, 679
- Milliken v. Bradley, 539
- Mills v. Commonwealth, 604
- Mississippi University for Women v. Hogan, 532, 543
- Missouri ex rel. Gaines v. Canada, 617
- Mitchell v. Helms, 736
- Mitchum v. Foster, 196
- Monitor Patriot Co. v. Roy, 963
- Moore v. East Cleveland, 603
- Moore v. Harper, 41
- Morrison v. Olson, 96, 101
- Morrison, United States v., 289
- Morse v. Frederick, 1019, 1033, 1037
- Mt. Healthy City School District Board of Education v. Doyle, 1016
- Mueller v. Allen, 732
- Mugler v. Kansas, 569
- Mullane v. Central Hanover Bank & Trust Co., 660
- Muller v. Oregon, 579
- Murphy v. National Collegiate Athletic Ass'n, 348, 350
- Myers v. United States, 53, 54, 336
- NAACP v. Alabama, 583
- NAACP v. Button, 743
- NAACP v. Claiborne Hardware Co., 866
- Naim v. Naim, 485
- National Collegiate Athletic Assn. v. Tarkanian, 437
- National Federation of Independent Business v. Sibelius, 351
- National Institute of Family & Life Advocates v. Becerra, 1050
- National League of Cities v. Usery, 194, 195, 320
- National Pork Producers Council v. Ross, 378
- National Rifle Association v. City of Chicago, 10
- Near v. Minnesota ex rel. Olson, 672, 932, 941
- Nevada Department of Human Resources v. Hibbs, 230, 311
- New Orleans City Park Improvement Ass'n v. Detiege, 481
- New Orleans v. Dukes, 564
- New State Ice Co. v. Liebmann, 10, 185, 294

- New York State Rifle & Pistol Association v. Bruen, 11  
New York Times Co. v. Sullivan, 898, 910  
New York Times Co. v. United States, 929  
New York v. Ferber, 849, 865, 886  
New York v. United States, 191, 326  
Nixon v. Administrator of General Services, 133  
Nixon v. Condon, 437  
Nixon v. Fitzgerald, 31, 120, 122  
Nixon v. United States, 166  
Nixon, United States v., 23  
NLRB v. Jones & Laughlin Steel Corp., 265  
NLRB v. Noel Canning, 133, 614  
North American Cold Storage Co. v. Chicago, 660  
North Georgia Finishing, Inc. v. Di-Chem, Inc., 422  
Northeastern Florida Chapter, General Contractors of America v. City of Jacksonville, 170  
O'Brien, United States v., 604, 837, 859, 866  
O'Mara v. Commonwealth, 806  
Obergefell v. Hodges, 550, 613, 620, 1049  
Ohralik v. Ohio State Bar Ass'n, 946  
Oklahoma v. Civil Service Comm'n, 301  
Oregon v. Mitchell, 305, 416  
Osborne v. Ohio, 882, 886  
Our Lady of Guadalupe School v. Morrissey-Berru, 771  
Palko v. Connecticut, 587  
Palmer v. Thompson, 489, 495  
Palmore v. Sidoti, 500  
Panama Refining Co. v. Ryan, 72, 74  
Papasian v. Allain, 463  
Parents Involved in Community Schools v. Seattle School District No. 1, 484, 501, 507  
Paris Adult Theatre I v. Slaton, 874  
Pell v. Procunier, 1060  
Pendergrass, State v., 1026  
Pennhurst State School & Hospital v. Halderman, 216  
Pennsylvania v. Union Gas Co., 219  
Perez v. United States, 274  
Perpich v. Department of Defense, 677, 679  
Perry Educational Ass'n v. Perry Local Educators' Ass'n, 983  
Perry v. Sindermann, 664, 953  
Personnel Administrator of Mass. v. Feeney, 311, 532, 550  
Peters, United States v., 44  
Philadelphia Newspapers, Inc. v. Hepps, 913  
Philadelphia, City of, v. New Jersey, 369, 376  
Pickering v. Board of Ed. of Township High School Dist. 205, 717  
Pierce v. Society of Sisters, 582, 590, 625, 748  
Pietsch v. Bush, 172, 173  
Pike v. Bruce Church, Inc., 370  
Pink, United States v., 131, 138  
Planned Parenthood of Southeastern Pennsylvania v. Casey, 595, 598, 599, 606, 611, 612  
Planned Parenthood of the Columbia/Wilmette, Inc. v. American Coalition of Life Activists, 823  
Plaut v. Spendthrift Farm, Inc., 319  
Playboy Entertainment Group, Inc., United States v., 848, 895  
Pleasant Grove City v. Summum, 986, 989  
Plessy v. Ferguson, 465, 617  
Plyler v. Doe, 512  
Poe v. Ullman, 585, 586, 615



- Polk County v. Dodson, 432  
Pope v. Illinois, 878  
Posadas de Puerto Rico Associates v. Tourism Co. of P.R., 951  
Powell v. McCormack, 52, 164  
Powers v. Ohio, 435, 532  
Press-Enterprise Co. v. Superior Court of Cal., County of Riverside, 312  
Principality of Monaco v. Mississippi, 340  
Printz v. United States, 335  
Prize Cases, 140  
Process Gas Consumer Group v. Consumer Energy Council, 95  
  
Quinn v. United States, 118  
  
R.A.V. v. City of St. Paul, 806, 858, 953  
Railway Express Agency v. New York, 452  
Raines v. Byrd, 106, 173, 175  
Rankin v. McPherson, 1016  
Red Lion Broadcasting Co. v. FCC, 832, 892  
Reed v. Reed, 524, 527  
Reed v. Town of Gilbert, 718, 858  
Regan v. Taxation with Representation of Wash., 996  
Regents of Univ. of Cal. v. Bakke, 501, 510  
Rendell-Baker v. Kohn, 437  
Reno v. American Civil Liberties Union, 802, 889  
Reno v. Condon, 346  
Renton v. Playtime Theatres, Inc., 890, 897  
Reynolds v. United States United States Supreme Court 740  
Rice v. Cayetano, 501, 505  
Rice v. Paladin Enterprises, Inc., 802  
Richmond v. J.A. Croson Co., 505  
Roberts v. United States Jaycees 768, 866, 867, 1053  
  
Roe v. Wade, 592, 598, 601, 611, 612  
Roman Catholic Diocese of Brooklyn v. Cuomo, 761  
Rome, City of, v. United States, 305  
Romer v. Evans, 546, 623  
Rosado v. Wyman, 210  
Rosenberger v. Rector and Visitors of Univ. of Va., 709, 1001, 1006  
Rosenbloom v. Metromedia, Inc., 912  
Roth v. United States, 831, 872, 878, 879  
Rubin v. Coors Brewing Co., 943  
Runyon v. McCrary, 867  
Rust v. Sullivan, 994  
  
Sable Communications of Cal., Inc. v. FCC, 513  
Sabri v. United States, 303  
San Antonio Ind. School District v. Rodriguez, 455, 459, 511  
San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 437  
Santa Fe Independent School District v. Doe, 709  
Saxbe v. Washington Post Co., 417 U.S. 843, 1060  
Schechter Poultry Corp. v. United States, 72, 74  
Schenck v. United States, 783, 792  
Schlesinger v. Reservists Committee to Stop the War, 172, 173  
School Dist. of Abington v. Schempp, 722  
Scott v. School Board of Alachua County, 1042  
Seeger, United States v., 685, 760  
Seila Law LLC v. Consumer Financial Protection Bureau, 100  
Seminole Tribe of Florida v. Florida, 216, 230  
Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich, 767  
Shapiro v. Thompson, 211, 312

- Shaw v. Hunt, 501, 505  
Shelley v. Kraemer, 439  
Sherbert v. Verner, 742  
Shreveport Rate Case (W.T.R. Co. v. United States), 253, 293  
Shurtleff v. City of Boston, 985  
Shuttlesworth v. City of Birmingham, 941  
Sipuel v. Board of Regents of Univ. of Okla., 617  
Skinner v. Oklahoma ex rel. Williamson, 312, 487, 583, 590, 616  
Slagle, State v., 604  
Slaughter-House Cases, 392, 465  
Smith v. Allwright, 437  
Smith v. California, 879  
Sniadach v. Family Finance Corp., 422  
Snyder v. Phelps, 926  
Sorrell v. IMS Health Inc., 959  
South Bay United Pentecostal Church v. Newsom, 761  
South Carolina v. Katzenbach, 305  
South Dakota v. Dole, 300, 330  
Southeastern Promotions, Ltd. v. Conrad, 892  
Spence v. Washington, 866  
Spokeo, Inc. v. Robins, 172  
Sprague, United States v., 667  
Stanley v. Georgia, 876, 879, 882  
State v. (See Name of Defendant)  
Sterling v. Constantin, 44  
Stevens, United States v., 847  
Stone v. Graham, 722  
Strauder v. West Virginia, 488  
Stromberg v. People of State of California, 780  
Students for Fair Admissions v. President and Fellows of Harvard College, 498  
Susan B. Anthony List v. Driehaus, 177, 179  
Sweatt v. Painter, 479, 617  
Sweezy v. New Hampshire, 1002  
Swift & Co. v. United States, 280  
Talley v. California, 1044  
Taylor v. Louisiana, 312  
Teamsters v. United States, 492  
Tennessee v. Lane, 231, 309  
Terminiello v. City of Chicago, 780, 865  
Terry v. Adams, 437  
Texas v. Johnson, 836  
Texas v. United States, 365  
Texas v. White, 192  
Texas, United States v., 175  
Thomas v. Review Bd., Ind. Empl. Sec. Div., 759  
Thornhill v. State of Alabama, 780  
Thornton, Estate of, v. Caldor, Inc., 760  
Tilton v. Richardson, 765  
Time, Inc. v. Hill, 914  
Torcaso v. Watkins, 685, 694  
Town of (See Name of Town)  
Transportation Union v. Long Island R. Co., 323  
TransUnion v. Ramirez, 172  
Trinity Lutheran Church of Columbia, Inc. v. Comer, 739  
Trump v. Hawaii, 478, 707  
Trump v. Mazars USA, LLP, 116  
Trump v. New York, 176  
Trump v. Vance, 30  
Tuan Anh Nguyen v. Immigration and Naturalization Service, 544  
Turner Broadcasting System, Inc. v. FCC, 604, 892  
Tyler Pipe Indus. v. Washington State Dep't of Revenue, 373  
United Foods, Inc., United States v., 959  
United Haulers Assn, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 376  
United Public Workers v. Mitchell, 176  
United States Dept. of Agriculture v. Moreno, 464, 548

- United States Forest Service v. Cowpasture River Preservation Ass'n, 299
- United States Postal Service v. Council of Greenburgh Civic Associations, 984
- United States v. (See Name of Defendant)
- Utah v. Strieff, 514
- UWM Post v. Board of Regents of the University of Wisconsin, 1041
- Van Orden v. Perry, 688
- Vasquez v. Hillery, 512
- Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 944, 945, 954
- Virginia v. Black, 804, 1023
- Virginia v. Rives, 424
- Virginia, Ex parte, 304
- Virginia, United States v., 534
- Vitek v. Jones, 659
- W.T.R. Co. v. United States (The Shreveport Rate Case), 253, 293
- Walker v. City of Birmingham, 941
- Walker v. Texas Division, Sons of Confederate Veterans, Inc., 988
- Wallace v. Jaffree, 407, 723
- Ward v. Rock Against Racism, 983
- Washington v. Davis, 487, 551
- Washington v. Glucksberg, 602, 603
- Watkins v. United States, 117
- Watson v. Jones, 766
- Wayman v. Southard, 75
- Weber v. Aetna Casualty & Surety Co., 526
- Welch v. Department of Highways and Public Transportation, 213
- Welsh v. United States, 685
- West v. Derby Unified School District No. 260, 1042
- West Coast Hotel Co. v. Parrish, 579
- West Virginia Board of Education v. Barnette, 959
- West Virginia v. Environmental Protection Agency, 78
- Whitney v. California, 788, 945
- Wickard v. Filburn, 272, 273, 274, 322
- Widmar v. Vincent, 972
- Williamson v. Lee Optical of Okla., 454, 459, 563, 576
- Williams-Yulee v. Florida Bar, 512, 513
- Wisconsin v. Constantineau, 656
- Wisconsin v. Mitchell, 864
- Wisconsin v. Yoder, 747, 756
- Witters v. Washington Dept. of Servs. for Blind, 732
- Wooley v. Maynard, 959, 1050
- Wyoming v. Oklahoma, 376
- Yick Wo v. Hopkins, 488, 500, 645
- Young v. American Mini Theatres, Inc., 831
- Young, Ex parte, 197, 201, 208
- Youngberg v. Romeo, 313, 646
- Younger v. Harris, 41, 198
- Youngstown Sheet & Tube Co. v. Sawyer, 54, 55, 129, 131, 134, 137, 138, 936
- Zablocki v. Redhail, 487
- Zacchini v. Scripps-Howard Broadcasting Co., 919
- Zaidan v. Trump, 170
- Zelman v. Simmons-Harris, 730
- Zivotofsky v. Kerry, 128
- Zobrest v. Catalina Foothills School Dist., 732
- Zorach v. Clauson, 718, 721



# Preface

---

More than thirty years ago we set out to create a constitutional law casebook that teaches well. We wanted to teach from a book that would engage students in learning basic constitutional law and would enable teachers to work with cases and problems relatively unencumbered by extensive secondary source materials and treatise-like notes. In preparing the eighth edition of our casebook, we have continued to develop the characteristics that distinguish our book from others. First, we continue to place heavy emphasis on the structure of government, the constitutional concepts of federalism and separation of powers. Typically, the constitutional law course has focused on three themes: judicial function, distribution of government power among the branches of the federal government and between the federal government and the states, and individual rights. The separation of powers and federalism issues, however, have been shortchanged in favor of study of the judicial function and individual rights.

Since the conception of our first edition in the early 1980's, separation of powers and federalism have retained their status as dominant themes in constitutional law as well as society generally. They continue to deserve close examination. Indeed, the renewed attention to separation of powers and federalism issues by the Supreme Court in recent years underscores the importance of structural issues in constitutional law.

Our treatment of the individual rights material also distinguishes this book from others. In prior editions, we organized the rights material around the contexts in which rights issues arise. Beginning with the third edition, we adopted a more traditional approach of presenting the individual rights materials doctrinally through separated examination of due process, equal protection, and the First Amendment. In doing so, however, we have maintained a unique focus. The chapter on equal protection, for example, begins with a consideration of the groups that were excluded from constitutional protection and then examines whether the equal protection clause has served as a vehicle of inclusion. We also omitted the electoral districting and reapportionment materials in favor of their extensive coverage in specialized texts and courses, and we relocated congressional enforcement of civil rights from what was chapter nine to the earlier chapter on congressional powers, chapter four.

Finally, we have rejected the notion that a good casebook must also be a treatise. We also have worked hard to produce a treatment of constitutional law that may reasonably be presented in a survey course. With a few exceptions, we have prepared

only brief notes and comments to guide the reader through the cases and to provoke independent thought about important constitutional issues without overwhelming students with scholarly debates. In lieu of extensive excerpts from secondary sources, we rely on hypothetical problems to facilitate study of the material. In drafting problems, we have been mindful of the value of placing law students in practical situations where they may be asked to be problem solvers of concrete and realistic constitutional issues. We remain convinced that such practical problems enable students to develop a better understanding of the underlying theory and doctrine. In addition, to improve the readability of the text in this edition we have chosen not to use ellipses to indicate omitted material.

WILLIAM C. BANKS

Syracuse, New York

RODNEY A. SMOLLA

South Royalton, Vermont

DAAN BRAVEMAN

Rochester, New York

January, 2024