

## Constitutional Law in the United States/Selected Topics

***We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.***

### ***Preamble to the United States Constitution***

#### I. Dates!

1607	First English Settlement in America in Jamestown (Virginia).
1775 – 1783	American War of Independence.
July 4, 1776	<u>Declaration of Independence</u> by the Second Continental Congress in Philadelphia.
1781	<u>Articles of Confederation</u> adopted by 13 States.  General George Washington defeated British Commander Cornwallis at the Battle of Yorktown
1783	Peace Treaty ending war: Treaty of Paris.
May – Sept. 1787	Delegates to Constitutional Convention meet in Philadelphia to revise Articles of Confederation.
Sept. 1787 – June, 1788	Ratification process by the States of the Constitution.
March 1789	Constitution officially went into effect.
April 30, 1789	George Washington sworn in as first American President.
Dec. 15, 1791	<b>The Bill of Rights</b> (first ten amendments to the Constitution) takes effect.

#### II. Historical background to the U.S. Constitution.

- A. The “Articles of Confederation” were the precursor to the Constitution. They were inadequate to meet the needs of the new nation. The major weakness was the federal government’s lack of power.

- B. The Constitutional Convention in the summer of 1787 was originally called to revise the Articles of Confederation. During the convention, the Articles were discarded and a new Constitution was drafted.
- C. The ratification process (ratify = adopt, confirm, enact, accept) was unique in that ratification was not done by state legislatures, but through state ratification conventions. There was more popular participation in these conventions, i.e. delegates came from a broad class of citizens; standard voting restrictions (property ownership) were often waived. This extended and inclusive ratification process resulted in a lively and public debate on the proposed Constitution.
- D. The first ten amendments to the Constitution (“Bill of Rights”) were ratified by the states 3 years after the original Constitution went into effect. Many states conditioned ratification of the Constitution upon this “Bill of Rights” which they believed necessary to protect individual rights from Government abuse.
  - Initially applied only to the federal government. Supreme Court decisions have since held that most provisions of the Bill of Rights also apply to the states also.

III. General remarks about a constitution.

- A. Reflects the norms and values of a society.
- B. Protects minority interests.
- C. Binding for present and future generations.
- D. Amending a constitution is a more involved process than enacting legislation.

Article V of the U.S. Constitution

- 2/3 of both houses of Congress may propose an amendment; must be ratified by ¾ of state legislatures or state conventions.
- 2/3 of state legislatures may call for a convention proposing amendments; must be ratified by ¾ of state legislatures or state convention.

- IV. Uniqueness of the U.S. Constitution in the 18<sup>th</sup> century.
  - A. Democratic self-government in each Article.
  - B. Voted on by “the people.”
  - C. Right to change and amend the document was included in the Constitution.
  
- V. Purpose of the U.S. Constitution: Highest legal norm in the U.S.
  - A. Delineates the relationship between the federal government and the states.
  - B. Sets out the structure of the federal government.
    - 1. Separation of powers: legislative, executive and judicial.
  - C. Protects certain individual rights from government intrusion.
  
- VI. Constitutional interpretation: Unique problems of interpreting a 200 year old document.
  - A. Originalists/strict interpretivists: The text of the constitution and the intent of the Framers are the main reference points in interpretation.
  - B. Non-interpretivists/non-originalists: Judges may “find” fundamental rights in the general provisions of the Constitution; modern notions of fairness and rights may be used in interpretation.
  
- VII. Some words about the U.S. Supreme Court
  - A. 9 judges (justices): Nominated by the President, subject to Senate confirmation.
  - B. Jurisdiction of the Court.
    - 1. Original: In disputes between States or between States and the Federal Government – one or two cases per year.

2. Appellate: Mandatory appellate jurisdiction only for a small number of cases, i.e. certain civil rights suits, reapportionment. 99% of the court's docket is discretionary.
- C. Criteria for case selection: Which cases does the Court hear and why?
- Federal Government as the petitioner;
  - Unclear or conflicted areas of law (in federal courts and highest State courts);
  - Ideological preferences of the justices; critical legal issues

## The United States Supreme Court/December 2017

### CHIEF JUSTICE OF THE UNITED STATES

John G. Roberts, Jr. (1/27/1955)

### ASSOCIATE JUSTICES

Anthony M. Kennedy (7/23/1936)

Clarence Thomas (6/23/1948)

Ruth Bader Ginsburg (3/15/1933)

Steven G. Breyer (8/13/1938)

Samuel A. Alito, Jr. (4/1/1950)

Sonia Sotomayor (6/25/1954)

Elena Kagan (4/28/1960)

Neil Gorsuch (8/29/1967)

### RETIRED JUSTICES

Sandra Day O'Connor

David H. Souter

John Paul Stevens

The Supreme Court consists of the Chief Justice of the United States and such number of Associate Justices as may be fixed by Congress. The number of Associate Justices is currently fixed at eight. (28 U.S.C. §1) As is the case with all federal judges, power to nominate the Justices is vested in the President of the United States, and appointments are made with the advice and consent of the U.S. Senate. Article III, §1 of the Constitution further provides that "the Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Article III of the Constitution provides for removal of high-ranking federal officials, including judges, for "treason, bribery, or other high crimes or misdemeanors."

The term of the Court begins, by law, on the first Monday in October and lasts until the first Monday in October of the next year. Approximately 12,000 petitions are filed with the Court in the course of a term. Currently, about 100 cases are actually decided each year. In addition, some 1,200 applications of various kinds are filed each year that can be acted upon by a single Justice.

The above is taken in part from the official web site of the U.S. Supreme Court: [www.supremecourtus.gov](http://www.supremecourtus.gov). This site also includes interesting information on current and past cases and on court history, biographical information about the justices, links to a copy of and information about the U.S. Constitution, transcripts of oral arguments, and information about the Court in various foreign languages, including German. The proceedings in the Supreme Court are not filmed, but oral arguments are open to the public.

The New York Times ([www.nytimes.com](http://www.nytimes.com)) and the Washington Post ([www.washingtonpost.com](http://www.washingtonpost.com)) newspapers have sections devoted to the U.S. Supreme Court and cases before it.

Another good site for information is the SCOTUSblog: <http://www.scotusblog.com/>

## Overview of the U.S. Constitution

### PREAMBLE

### ARTICLE I

Section 1:	The Legislative Branch
Section 2:	The House of Representatives
Section 3:	The Senate
Sections 4-7:	Organization of Congress
Section 8:	Powers granted to Congress; the "Commerce Clause"
Section 9:	Limitations on Congressional Powers
Section 10:	Limitations on State Powers

### ARTICLE II

Sections 1-4:	The Executive Branch
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### ARTICLE III

Sections 1-3:	The Judicial Branch
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### ARTICLE IV

Sections 1-2:	Relationship among the States
Sections 3-4:	Federal-State Relations

### ARTICLE V

Amending the Constitution

### ARTICLE VI

National Debts; the "Supremacy Clause"

### ARTICLE VII

Ratification of the Constitution

## AMENDMENTS TO THE CONSTITUTION

### Amendments 1 thru 10: The Bill of Rights (1791)

<b>Amendment 1:</b>	Freedom of religion, speech, and the press; rights of assembly and petition
<b>Amendment 2:</b>	Right to bear arms
<b>Amendment 3:</b>	Housing of soldiers
<b>Amendment 4:</b>	Search and arrest warrants
<b>Amendment 5:</b>	Rights in criminal cases, i.e. grand jury, double jeopardy, self-incrimination; due process

<b>Amendment 6:</b>	Rights to a fair trial, i.e. trial jury in criminal cases, public trial,
<b>Amendment 7:</b>	Rights in civil cases, i.e. jury trial
<b>Amendment 8:</b>	Bails, fines, and punishments
<b>Amendment 9:</b>	Rights retained by the people – “unenumerated rights”
<b>Amendment 10:</b>	Powers retained by the states and the people
<b>Amendment 11:</b>	Lawsuits against states (1795)
<b>Amendment 12:</b>	Election of the President and Vice President (1804)
<b>Amendment 13:</b>	Abolition of slavery (1865)
<b>Amendment 14:</b>	“Equal protection”, “due process” clauses (1868)
<b>Amendment 15:</b>	African-American suffrage (1870)
<b>Amendment 16:</b>	Income taxes (1913)
<b>Amendment 17:</b>	Direct election of senators (1913)
<b>Amendment 18:</b>	Prohibition of liquor (1919)
<b>Amendment 19:</b>	Women’s suffrage (1920)
<b>Amendment 20:</b>	Office terms of the President and Congress (1933)
<b>Amendment 21:</b>	Repeal of prohibition (1933)
<b>Amendment 22:</b>	Presidential term limits (1951)
<b>Amendment 23:</b>	Suffrage in the District of Columbia (1961)
<b>Amendment 24:</b>	Poll taxes (1964)
<b>Amendment 25:</b>	Presidential disability and succession (1967)
<b>Amendment 26:</b>	Suffrage for eighteen-year-olds (1971)
<b>Amendment 27:</b>	Congressional salaries (1992)